PETROLEUM DEVELOPMENT CONTRACTS WITH MULTINATIONAL OIL CORPORATIONS: FOCUS ON THE NIGERIAN OIL INDUSTRY.

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ABSTRACT

Today, the Nigerian oil industry is dominated by MNOCs who provide the technology and managerial expertise for the running of the industry. Petroleum development is a capital-intensive business involving enormous sums of money in foreign exchange. It also involves a lot of negotiations between the MNOCs and Nigeria. These negotiations often end with signing of contractual obligations by both sides. Nigeria, being a Third world country is at obvious disadvantage compared to the MNOCs in terms of risk capital, technology and management skills.

The major focus of the study is on the structure and forms of petroleum development contracts between Nigeria and the MNOCs. The scope covers contracts spanning the period when oil exploration first began in Nigeria to the present. Crucial issues such as ownership, control, transfer of technology, financial returns and 'indigenisation' of the industry under the contracts is examined against the background of the country's overall foreign investment policies, petroleum policies and changes in the global oil scene. The aim is to see whether the contracts strike a balance between foreign exploitation and national policy objectives. With contemporary study of law gradually moving towards the study of law as an interdisciplinary subject, the study significantly draws on political economy writings in economics, politics and law.

It is found that three kinds of petroleum contracts are operating in Nigeria. These include - concession regimes, joint venture/participation agreements and production sharing/risk service contracts. Also that the structures of these contracts are largely based on the bargaining strength of the two parties. Although, the study argued that Nigeria had improved her bargaining position through her experience over the years and membership of OPEC, yet the study demonstrates that these contracts do not allow Nigeria enough opportunity to reduce her dependence on the MNOCs. In all, the study demonstrates how difficult it is for a less developed country such as Nigeria to gain complete control over its petroleum resource (even if it has the capital) if it lacks technological and managerial capabilities. It also demonstrates the role and limitations of law in fashioning the framework for relations between MNCs and the TWCs.

DEDICATION

To Mr & Mrs Gidado (Mum & Dad), Abbo Jiddere (Uncle),and Lucy (sister), all of whom sustained me in their respective spheres.

M.M.G.

DECLARATION

The material contained in this thesis is the work solely of the author. None of the material has been submitted previously for a degree in this or any other university.

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my appreciation of all the sacrifices they have had to make, I have dedicated this work to them.

In conclusion, I must state that while acknowledging the help given to me by all the above-mentioned individuals and organisations, and others not mentioned (who wish to remain anonymous) I am alone responsible for all the views expressed in this study and for any errors that remain.

M.M.G.

GLOSSARY OF ABBREVIATIONS

AAA	American Arbitration Association.
AGIP	Azienda Generale Italiana Petroli.
ALCOA	Alcoa Incorporated.
ANACONDA	Anaconda Incorporated.
ARAMCO	Arabian American oil Company.
ASHLAND	Ashland Oil Incorporation.
AP	African Petroleum.
API	American Petroleum Institute.
BETCHTEL	Betchel Incorporated.
BNOC	British National Oil Corporation.
BP	British Petroleum Company.
CBN	Central Bank of Nigeria.
CHEVRON	Chevron Corporation.
ELF	Societe Nationale ELF Aquitaine Inc.
ENI	Ente Nazionale Italy.
EXXON	Exxon Corporation.
FBIR	Federal Board of Inland Revenue.
fob	Free on board.
FT	Financial Times Newspaper.
GDP	Gross Domestic Product.
GETTY	Getty Oil Corporation.
GULF	Gulf Oil Corporation.
GMBS	Gelsenbergy Mineraotoil of Germany.
GNP	Gross National Product.
ICC	International Chamber of Commerce.
ICSID	International Centre for the Settlement of Investment Disputes.
IDSL	Integrated Data Services Limited.
ILO	International Labour Organisation.
ILR	International Legal Material.
IMF	International Monetary Fund.
INOC	Iraq National Oil Company.
ITT	International Telephone and Telecommunications Company.
JOA	Joint Operating Agreement.
KNPC	Kuwait National Petroleum Company.
LAD	Law and Development.
LDC	Less Developed Country.
LIBOR	London Interbank Offered Rate.
LNG	Liquified Natural Gas.
LONHRO	Lonhro Incorporated.
MNOC	Multinational Oil Corporation.
MNC	Multinational Corporation.
MOBIL	Mobil Oil Corporation.
NBC	Nigerian Bitumen Company.
NEP ACT	Nigerian Enterprises Promotion Act.
NETCO	National Engineering and Technical Company Limited.
NICON	National Insurance Corporation Nigeria.
NIPSS	National Institute for Policy and Strategic Studies.
NLNG	Nigerian Liquified Natural Gas Company.
NNPC	Nigerian National Petroleum Corporation.
NNOC	Nigerian National Oil Company.

NOIP	National Office of Industrial Property.
NUC	Nigerian Universities Commission.
OAPEC	Organisation of Arab Petroleum Exporting Countries.
OCCIDENTAL	Occidental Oil Incorporation.
OEL	Oil Exploration Licence.
OML	Oil Mining lease.
ONGC	Oil and National Gas Commission, India.
OPEC	Organisation of Petroleum Exporting Countries.
OPIC	Overseas Private Investment Corporation.
OPL	Oil Prospecting Licence.
OSP	Official Selling Price.
b/d	barrels per day.
PERTAMINA	Mexican National Oil Company.
PETROMIN	The General Petroleum and Mineral Organisation of Saudi Arabia.
PETROPERU	Peru National Oil Company.
PHILLIPS	Phillips Petroleum Company.
PIU	Petroleum Inspectorate Unit.
PPT ACT	Petroleum and Profits Tax Act.
PSC	Production Sharing Contract.
R and D	Research and Development.
ROYAL DUTCH/SHELL	Royal Dutch Petroleum Company, The Netherlands and Shell Transport and Trading Company, U.K.
RSC	Risk Service Contract.
SAP	Structural Adjustment Programme.
SAFRAP	Societe Africaine D'Exploration Petroliere.
SFEM	Second-Tier Foreign Exchange Market.
SOC	State Oil Company.
SONATRACH	Algerian National Oil Company
sq.ml.	Square Miles.
sq.kl.	Square Kilometres.
TCPC	Technical Committee on Privatisation and Commercialisation.
TENNECO	Tenneco Incorporated.
TEXACO	Texaco Incorporated.
TOTAL/CFP	Compagnie Francaise des Petroles.
TWC	Third World Country.
UAC	United African Company.
UN	United Nations.
UNCTAD	United Nations Conference on Trade and Development.
UNCTNC	United Nations Centre on Transnational Corporations.
UNDP	United Nations Development Programme.
UNREC	United Nations Research and Economic Council.

A NOTE ON METHODOLOGY, SOURCES AND ASSUMPTIONS.

My choice of the subject matter of this thesis was largely influenced by the fact that, firstly, since the 1970s, oil has become a major factor in the economy of Nigeria and secondly, it was the rarity of a 'law-in-context' study and analysis of the contracts governing the exploitation of such vital resources in Nigeria.

The few writings on the subject by Nigerian Scholars tend towards the positivist approach to law. For this reason they concentrate only on the doctrinal approach. This study has thus blended both the socio-economic and legal analysis of the subject. To this end, the methodology is in the main analytically modelled on 'law-in-context' approach. 'Law in context' is a specific approach to legal problems which is shared by all its members. In contrast to the technical and doctrinal style of legal analysis this approach insists on analysing legal phenomena in their social, political and economic contexts.

Inevitably, most of the data and other sources of materials used in this study are documentary. The documents include copies of the petroleum agreements (contained in the Appendix), official publications and records on the subject as well as relevant legislation in the area.

The study is also based on data and information collated through field interviews in Nigeria with Management and Executives of the Nigerian National Oil Corporation (NNPC) on one hand and those of the MNOCs operating in Nigeria on the other. The interviews were conducted between August 1989 and January 1990. At the interview sessions, questions were put orally to the respondents with the aid of questionnaires. This method was resorted to after it became clear to the author that written answers to the questionnaires were not forthcoming because the respondents appeared to be too busy to take the questionnaires home and answer item by item.

Generally, the interviews proved quite illuminating even though difficult at the initial stage. Officials of both the NNPC and foreign oil companies were uncooperative in releasing information on grounds of confidentiality. Both sides at first thought I belonged either to one of the media houses or a front to an international organisation or even a government agent. Their general pattern of behaviour was that of evasiveness, suspicion and outright unwillingness to cooperate with people trying to conduct research into the oil industry. The Nigerian employees in both the NNPC and foreign oil companies were no much better than their expatriate counterparts in releasing information.

Data has therefore generally been difficult to obtain from the oil companies. Where some data and information was given, it was generally difficult, if not impossible, to verify its authenticity. Indeed, some questions were ignored especially those on finance or remunerations with the excuse that the questions were too confidential.

The difficulty of obtaining information notwithstanding, adequate amounts of data and information were collected from the interviews conducted and the visits paid to the oil areas. Relevant data and information were also gathered from various libraries both in Nigeria and the U.K. These include:

- Institute of Petroleum and Mineral law studies Library, University of Dundee, Scotland.
- The Commonwealth Secretariate Library, London.
- The Petroleum Institute Library, London.
- The Centre for West African Studies, University of Birmingham Library.
- NNPC Falomo Complex Library, Lagos.
- Petroleum Institute Library, Warri.
- Nigeria Institute of International Affairs Library, Lagos.
- University of Lagos Library, Lagos.
- University of Benin Library, Benin City (Nigeria).

Visits were also paid to places like the Shell Centre London, B.P. House London, NNPC branch office in London and the Nigerian High Commission in London where the available literature on oil and Nigeria was sifted for relevant information on the subject area of this research.

ASSUMPTIONS

My interest in this area of study started when I studied 'Legal regulation of Multinational Corporations, International trade and investment,' a course at the LL.M. Law in Development class (Public Enterprise) in 1986/87 session at Warwick University. I realised that most of the mineral resource sectors operating in TWCs and which these countries rely on for meeting their economic development objectives are largely dominated by MNCs who provide the wherewithal needed for the exploitation of these resources. As a result, these companies make immense profits which are mostly stashed and transferred abroad or to their parent companies thereby making no meaningful contribution to the host countries. As profit maximisers, these companies are concerned with their world-wide interests which transcend individual national interests. To reverse this trend, the TWCs have to possess among other things the required technology and managerial expertise to be able to exercise complete and effective control over their mineral resource sectors and thereby get the full benefits therefrom. Without this, the MNCs will continue to control and dominate the development of such resources to their own credit *ad infinitum.* Ambitious as these aspirations of the TWCs may seem, unfortunately they find themselves operating in a dependant position against the weight of the MNCs in terms of the latter's technological and management expertise. It is only a question of degree as to what extent a TWC will find itself being integrated into the global operations of these MNCs. Such global integration, apart from reducing the developing country's fledgling industrial growth capability, it also reduces it to a perpetual dependency position.

Based on the above assumption, this work is undertaken on the premise that law as part of the supra-structure and a tool for effecting social change is capable of achieving for Nigeria her desired interests in petroleum development.

ORGANISATION OF THE THESIS.

The thesis altogether consists of seven chapters. Chapters One and Two contain the theoretical and conceptual framework of the thesis. Chapter One starts with a brief analysis of petroleum development contracts in the context of general contract law theory. The bargaining theory models operating between the Nigerian oil industry and the MNOCs are also explored. This is followed by account on the emergence of MNCs in general and their impact on development in the TWCs in which they operate.

Chapter two deals with the Nigerian foreign investment policies, the country's petroleum policies and ends with the impact of OPEC on the latter. The background and growth of the Nigerian Petroleum Industry is also provided in chapter Two. It further contributes to the argument on whether or not Nigeria should quit OPEC.

Chapter three looks at the development and growth of NNPC as a Nigerian state petroleum company. Its organisational form, corporate structure and position as agency for negotiating contracts on behalf of government are equally described.

And lastly, detailed and comprehensive analysis on the various forms of petroleum agreements are set forth in Chapters four to six. The issues covered in such analysis include terms of the various contracts in relation to ownership, control, financial returns, training and transfer of technology, among others. Chapter Four analyses the traditional oil concession regimes and joint venture/participation arrangements. The relative merits and demerits of each are identified and evaluated. Chapter five is devoted to an evaluation of production sharing and risk service contracts. Possible reasons why Nigeria resorted to these contracts are proffered in the analysis and measures to improve their application in the country given.

Chapter six investigates the thorny issue of transfer of technology and training of nationals in the Nigerian Petroleum Industry. The major question addressed here is whether or not the MNOCs have transferred petroleum technology and management skills to the country. Chapter seven is the conclusion and summary of findings plus recommendations for the future of the petroleum industry resulting from the study.

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TABLE OF CASES.

CHAPTER ONE

GENERAL INTRODUCTION AND THEORETICAL SETTING.

This study critically examines the petroleum development contracts between Multinational oil corporations (MNOCs) and the Nigerian oil industry against the background of the Nigerian foreign investment regulations, oil policies and changes in the international petroleum scene. The kinds of legal arrangements between governments of oil producing states such as Nigeria and the MNOCs under which petroleum resources are generally developed are important especially to the former which depend solely on oil rents for meeting their economic development goals.

The term "petroleum development contract" as applied in this study means contractual agreements between the host countries and MNOCs which are generally long-term, involve the exploitation of petroleum resources and generally govern all aspects of the petroleum operations ranging from exploration through to the marketing stages of the product.

There is no doubt that any government committed to petroleum development would adopt policies and measures which would ensure that if petroleum were discovered, the maximum of benefits resulting from such discovery would accrue to the national economy. Consequently, petroleum producing countries, including Nigeria our case-study as the study will reveal, sought as a basic objective the maximum development of their resources in providing a major source of domestic revenue and foreign exchange earning. Other objectives include, support to domestic industries, employment of nationals, transfer of technology and skills to nationals.

It is imperative that in attaining these objectives, the host oil producing state provide a stable and efficient legal and administrative structure. Anything else, would constitute too significant a risk factor to the potential investor (MNOC) and deter investment and development. Further, a proper and well-defined legal and administrative framework represents a strategy to development which uses mechanisms designed to secure state objectives.

Traditionally, it is the MNOCs which provide the resources necessary for the petroleum development which include- risk capital, technological and managerial skills, as well as marketing outlets. In order to obtain these on the best terms, the host governments must be aware of alternative sources which they may be able to draw upon, and of the necessary steps that they can take to impose their bargaining position in negotiations with the MNOCs. More discussion on the bargaining positions of the parties is provided below.

Generally, ever since the MNOCs started investing in mineral resource sectors in Third world countries (TWCs), there has been a proliferation in the kind of legal arrangements between these two. Traditional foreign direct investment (FDI) in the form of the old concession regime predominated in petroleum extraction scene until the late 1950s. Under these concessions, the MNOCs secured ownership of the petroleum that was discovered, appropriated the bulk of the revenues and exercised nearly total control over all phases of the petroleum operations. These concessions which have been negotiated during the colonial era were perceived as unfavourable to the host countries. The late 1960s and early 1970s witnessed drastic changes and shifts in the pattern of legal arrangements between governments and MNOCs. These, as we will discern later on, have been brought about by changes in the global enviroment, in particular in the conditions prevailing in the international petroleum industry and in the consequent shift in the bargaining positions of governments and the MNOCs through the emergence of the Organisation of petroleum exporting countries (OPEC) on the oil scene. These new types of legal arrangements also referred to in some quarters as new forms of investment (NFI) as opposed to the traditional FDI[1], under which governments have been able to obtain the resources of the MNOCs for petroleum development on better terms include, "joint ventures" or "participation agreements", "production sharing contracts" and "risk service contracts". These legal arrangements are examined in relation to the Nigerian oil industry in chapters five and six of the study.

As mentioned earlier, the primary aim of this study is to critically examine certain important features of the

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1 The discourse on this shift from the traditional FDI to the NFI is well documented in Oman, C. New forms of investment in developing country industries: mining, petrochemicals, automobiles, textiles, food. (OECD,1989), particularly in chapter one.

petroleum contracts in the light of the legal, structural and administrative policy guidelines used in developing the resources in Nigeria. It also makes comparative analysis with situations in other OPEC and non-OPEC member countries. The study also makes proposals for reforms in some fiscal and sectoral development aspects of the industry as well as for alternative sources of technology transfer to the country. Thus the four main principal areas examined in the contracts include; aspects of ownership, control, fiscal and transfer of technology in the industry. In examining these features, one purpose is intended. That is, to assess their viability in achieving the particular objectives and policies of the country in its petroleum resource development. As a prelude to this, it is now proposed in this introductory chapter and chaper two to highlight the policy guidelines of the Nigerian government and practices of the institutions which characterise the operations of the Nigerian oil industry. This is necessary because they constitute the framework within which the petroleum contracts are shaped and also operate. Any changes in their directions will no doubt also affect the nature and structure of the contracts. They include: bargaining positions of Nigeria and the MNOCs, the structure and activities of Multinationals vis-a-vis development in TWCs, Nigerian foreign investment policies and the impact of OPEC on both the Nigerian oil industry and the international oil scene. Also it is from this background that the general structure and operations of the Nigerian oil industry and its dealings with MNOCs can be appreciated and the development strategy of the country's petroleum resource fully understood. First, we commence in this chapter with a look at the bargaining positions of the two parties and the structure and activities of the Multinationals. The segment on Nigeria's foreign investment policies and the impact of OPEC on Nigeria and the international oil scene will form the subject matters of discussion in chapter two.

1.1 BARGAINING POSITIONS OF NIGERIA AND THE MULTINATIONALS.

Generally, the business of petroleum development involves the use of substantial risk capital especially at the initial stages, sophisticated technology, managerial expertise and marketing outlets. In addition, it involves a lot of negotiation between the Multinational oil companies who provide these inputs on the one hand and the host country which owns the petroleum resources on the other. These negotiations often end in the kind of legal arrangement under which the resource is to be developed. Usually, since the two parties have distinct objectives which each endeavours to achieve when they are involved in any such business relations, there arises the need for a legal framework which will provide a basis which sufficiently safeguards the interest of each to provide a mutually acceptable basis for cooperation. The law of contract provides such a medium for the parties.[2] For purposes of this study, contract will be viewed as consisting of an exchange of promises, carried out through the process of offer and acceptance, with the element of consideration and the intention to create legal relationship. When the contract is made, it binds each party to performance, or, in default, to a liability to pay compensation. This is the paradigm model of contract which was inherited from the classical contract law model of the nineteenth century which is still useful and applicable today.[3]

In a nutshell, the assumptions underlying the classical contract theory and its basic concept of freedom of contract were that;(1) the parties were free to determine their own norms of contract, i.e. free from any social or economic factor determining it for them.(2) That in a situation of perfect competition, neither party to a contract has any power over the other. This meant that each party was assumed to have equal bargaining power in the process of contract making.(3) Finally, that the

2 It has been a contentious matter whether private contract law or international law should govern petroleum investment contracts. While some argue that it should be under the rubric of private contract law, subject to all the niceties of that regime of legal transactions, others insist that it comes under international agreements and in particular the rule *pacta sunt servanda*. See McNair,A.,"The general principles of law recognised by civilised nations", British Yearbook of International Law, 1957 chapter 1 and Bowett, D.W., "State contracts with aliens: Contemporary developments on compensation for termination or breach", British Yearbook of International Law, 1988 pp.54-55. In respect of petroleum agreements concluded between Nigeria and the MNOCs, as will be discerned later, the laws governing these agreements are a hybrid of private contract law, national laws of Nigeria and international law.

3 For fuller text on these necessary requirements for a valid contract, see Cheshire anf Fifoot, Law of Contract, by Furmston, M.P., 1981, E.I. Sagay, Nigerian law of contract, Sweet and Maxwell, 1985 and Beale, H.et al Contracts, cases and materials, Butterworths, London, 1990.

state should not intervene in the bargaining process. It should only provide a framework within which such bargaining could take place, which implies that it should confine itself within the functions of conflict resolutions. Such is the ideal laissez-faire state.[4] Undoubtedtly, these assumptions are very much out of touch with reality in the world today, especially when applied in relation to contracts between giant monopolies such as the MNCs and smaller firms or state governments in developing countries where there are greater disparities in the bargaining power between them. For instance it is trite knowledge that the latter have lesser bargaining power at the pre-contract negotiations than the former on whom they rely for capital, technology and management skills.

The bargaining power of parties is said to be unequal if the situation is such that one of the parties is so strong in the negotiation process and the other so weak that the stronger party is capable of pushing the weaker one to the state of adherence to the terms of the contract which are in favour of the stronger party. But just what constitutes stronger or weaker bargaining power if one may ask? To answer this, if one examines the several doctrines under which the Common Law gives relief to a party to an unfair contract, it becomes apparent that the inequality of bargaining power and the resulting unfairness are of different types in the various cases.

4 Details on this classical contract theory are documented in Atiyah, P.S., The Rise and fall of freedom of contract, 1979, especially in chapters 8-10.

This is so because a contract which is unfair in one situation may not be unfair in another. For example, it is observed that most of the more traditional doctrines of Common Law such as unconscionability and unreasonableness apply only where there is unfairness in the sense of inadequacy of consideration, but that some rules apply to clauses which leave a party at risk even if he got value-for-money; and that inequality of bargaining power can mean 'ignorance, vulnerability to persuasion, desperate need, lack of bargaining skills or simple lack of influence in the market.'[5] And Lord Denning in the case of <u>**LLOYDS BANK V. BUNDY**</u>[6] maintained that many of the defences to a contract enforcement, such as, duress, undue influence, breach of fiduciary duty, were properly exemplary of a general doctrine of inequality of bargaining power.

By and large, it can be seen that what constitutes a superior or weaker bargaining power among contracting parties is not precise and clearly definable. As mentioned above, they take various forms depending on the circumstances in each case. The underlying factor, however, seems to be that the contractual transaction is not such that is based on a "give-and-take of bargaining" but a product of the "take-it-or-leave-it attitude" where outcomes were viewed as what one side obtained the other

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5 See Beale, H., "Inequality of bargaining power". Oxford Journal of Legal Studies, Vol.6 No.1, 1988 p.125.

6 1974 3 W.L.R. p.501, See also the case of National Westminster Bank V. Morgan 1985 1 All E.R. 821.

side have necessarily lost.[7] And in the end, the main objective of each party was to maximise short-term profits from the exploitation of the resource regardless of the impact on the other party or the project. As the above expositions indicate, bargaining power could take the form of bargaining skills, sophistication, capital, technology, possession of relevant information, knowledge of market outlets, etc. When one party to a contract has one or all of these advantages compared to the other and is capable of using it to enter into bargains that are unconscionable, he has superior bargaining power than the other. Conversely, weakness of bargaining power can either take the form of ignorance, lack of experience, vulnerability to influence or lack of bargaining skill of one party which the other can exploit to his advantage.

In the light of the above, our analysis of the petroleum development contracts between MNOCs and Nigeria will also take account of the superior bargaining strength which the former has over the latter. Petroleum investment as mentioned earlier, involves a complex interplay of many issues ranging from capital, economics, law, technology, politics and managerial skills. The outcome of any petroleum development contract between a host state and any MNOC will depend much on the relative strengths and bargaining positions in relation to these factors.

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7 The "take it or leave it " style of bargaining is also sometimes referred to as the "win-lose logic" or the "distributive bargaining " system and the "give and take attitude" as the "win-win logic" or "integrative bargaining" system. For fuller discussions see, Banks, J.C. "Negotiating International mining agreements: Win-Win Vs Win-Lose bargaining", Columbia Journal of World Business, Vol.22, 1987 pp.65-72 and Walton, R.E. and R.B. McKersie, A behavioural theory of labour negotiations, New York, 1965 , chapters 2-3.

Usually, the MNOCs have greater bargaining power because of their sophistication and access to sources of vast capital, technological know-how, managerial skill and marketing outlets which are required by the host country to exploit her hydrocarbon resources. On the other hand, the host country exercises sovereignty over its natural reources which is also needed to be developed by the MNOC. It is on this score that the whole bargainings are based.

1.1.1. BARGAINING THEORY MODELS

Studies on the bargaining theory models of multinationals and host countries relations in mineral resource investments-copper and oil have shown that the balance of power at the negotiation table between them begins very much tilted in favour of the Multinationals and tips inevitably away from them toward the host countries.[8] At the start of the business, since the Multinationals enjoy near-monopoly control over the wherewithal needed to bring the mine on-line, the host country has little option but to accept terms weighted heavily in favour of the former. But once one or more Multinationals commit themselves and invest, and the mines are successful, the bargaining strengths change instantly. At that stage, the elements of uncertainty and risk are reduced. The host

8 For studies that document cases of such disparities and shifts in bargaining strengths in the Multinationals and host country relations vis-a-vis mining industries, see Moran, T.H., Multinational Corporations and the politics of dependence: Copper in Chile, Princeton University Press, 1974; Mikesell,R.F., New patterns of world mineral development, Washington, 1979; Wells, L.T., "The evolution of concession agreements in developing countries," Harvard Development Advisory Service, March 29, 1971; Banks,J.C. "Negotiating international mining agreements, Ibid., and Oman, C., New forms of investment in developing country industries, op.cit.

country then begins to see the industry as a profitable venture which is under the control of a foreign firm. Hence, the terms of the original agreement are sought to be tightened in favour of the host country. In effect, what happens is that in order to attract foreign investors the host country loosens its investment terms but after they have proved successfull it tightens such terms. In this process of losssening and tightening of the investment terms, the host country gradually moves up a learning curve of negotiating skills and of direct operating skills for the industry.[9] At that level also the host government begins to demand for the hiring of its nationals in supervisory positions and participation in the arrangement of international marketing and finance. As the host country invades those areas that were hitherto the exclusive preserves of the Multinationals, it can be able to play the game of win-win or win-lose bargaining model with the Multinational in a tighter extent.

The kind of bargaining model referred to above which is conceptualised in 'take-it-or-leave-it' or 'win-lose' terms characterises the present relations between the MNOCs and the Nigerian oil industry and indeed other mineral resource concessions elsewhere. The win-lose bargaining model means that outcomes were viewed in zero sum terms and the portion of each party's share would be a direct function of its relative bargaining strength. Because this bargaining relationship is seen as a power

9 See Moran, T.H. op.cit. p.162.

struggle, both the MNOCs and the host countries adopt a number of strategies to enhance their bargaining strength so as to emerge winners at the negotiating table. Some of the common strategies adopted by the MNOCs to enhance their relative power included old-style concessions, project financing, cartel formation and research in extraction technology.[10] The host countries on their part tried project depackaging, state-owned enterprises and cartel arrangements as means of enhancing their power.[11] It will, for instance be discovered in the study that, the relationship between OPEC memberstates and the MNOCs correctly depicts this bargaining model at work. When the MNOCs were in superior initial bargaining position, they sought to appropriate a greater share of the surplus generated by the hydrocarbon resources. To do so, the MNOCs placed considerable emphasis on contracts (especially traditional concessions) as mechanisms for guaranteeing their long-term expectations. OPEC memberststes compelled to attract foreign investment and expertise in the development of their resources agreed to terms and conditions which reflected the greater initial bargaining power of the MNOCs but which they sought to modify when the bargaining power shifted in their favour. Bargaining positions can change due to several factors. For instance, bargaining power shifted in the international oil industry due to changes in the

10 See Amsalem, M.A.,"Bauxite, Copper and Oil: Bargaining power and the economics of foreign investment", Columbia Journal of World Business, Vol.19, 1984, pp.19-25.

11 See Wells, L.T. Jr, Third World Multinationals, The MIT Press, 1983 and Mikesell, R.F.op.cit.

industry, when the entry of a large number of the so-called "minors" and state-owned companies eroded the dominance of the "majors", led to competition for investment opportunities and thus enabled the host countries to obtain improved terms under new types of legal arrangements. A detailed account on the changes that occurred in the international oil industry is provided in chapter two. Shifts in bargaining positions can also take place due to purely local developments. An illustration of this is seen where a host country decides to nationalise its oil industry after it had acquired effective technological and managerial capabilities.

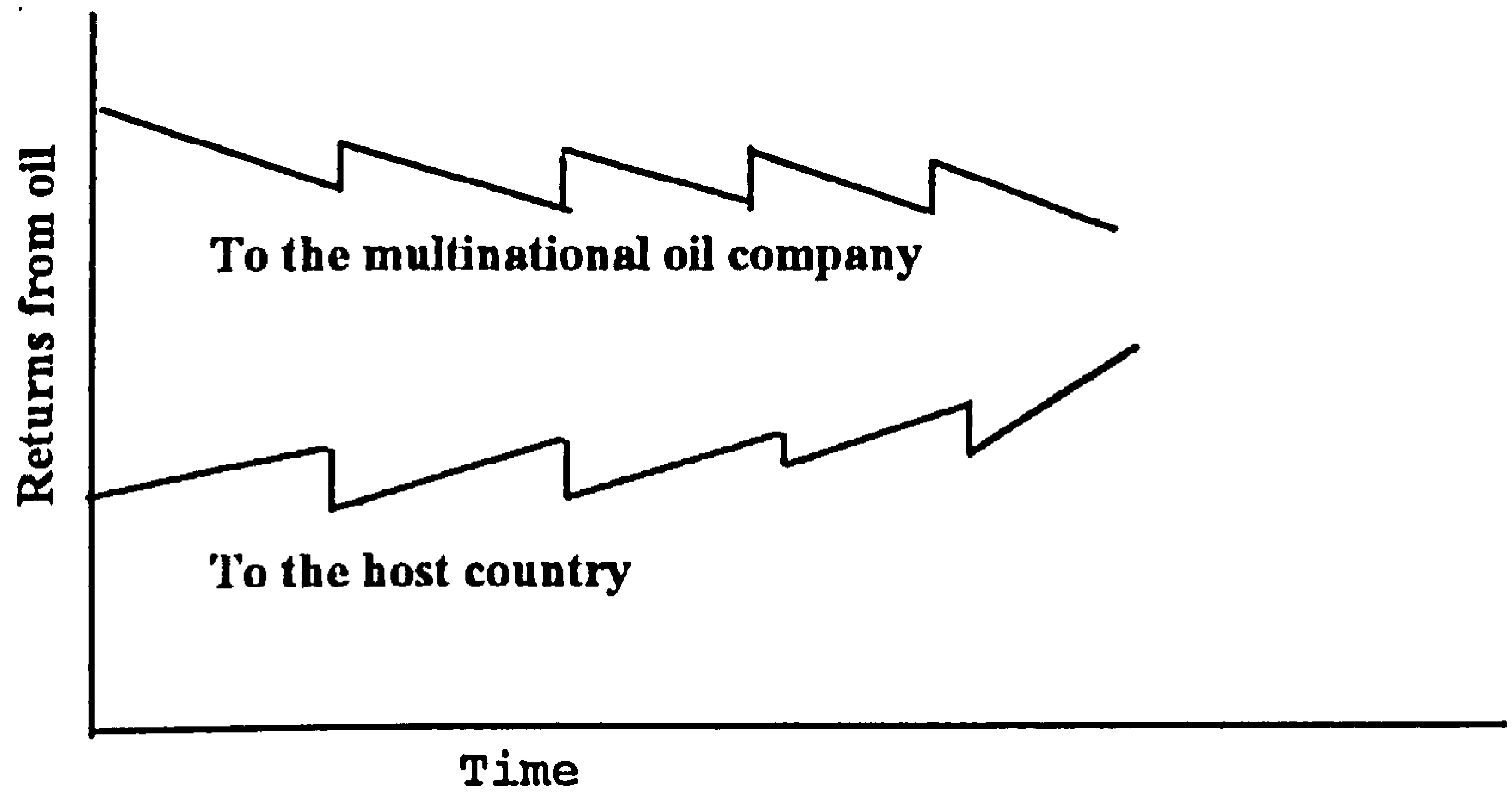
Shifts in the relative bargaining power of host countries and MNOCs result not only from such changes in the global or domestic enviroment, but from their changing role over the life of a concession from one phase of operations to another. This point was also succintly noted by one writer, Wells, when he described a concession contract as:

> "the product of a bargaining process, reflecting the strengths and weaknesses of the two parties and their bargaining skills. But the relative positions of the parties change with time...."[12]

It is pertinent to note that a petroleum development arrangenment is one which involves distinct stages of operations. There is the pre-exploration stage, an exploration stage, a development stage, a production stage and finally the marketing stage. As mentioned earlier, the relative bargaining power of a MNOC is

12 Wells, L.T. The Evolution of concession agreements Economic Development Report No.117, 1971, p.104.

greatest at the earliest pre-exploration where there are only broad indications of the possibility of the existence of petroleum resources. For the host country at this stage there is a clear interest in attracting the capital and oil technology of the MNOC to undertake the exploration job. But once the exploration is undertaken and the operation is a success, the whole atmosphere that surrounds their relations changes. The project has matured and it is at this stage that the pendulum of bargaining power swings strongly in favour of the host country. Basically all that is left as the bargaining chip of the MNOC is the threat of withholding further investment or withdrawing its technical and managerial expertise. But at this stage, the possibility of the MNOC to withdraw from the venture without first obtaining back the expected reward diminishes as its stake increases through the infusion of equipment, personnel and capital. A graphic representation of this changing balance of power between the MNOCs and the host countries is shown below in Chart 1.



Note: Since returns are dictated by OPEC prices through the market forces of supply and demand, the curves will not be smooth.

It needs be stressed too that the certainty or otherwise about the existence of petroleum resource is not the only variable that determines shifts of the balance of power between the MNOCs and host countries. There is also the idea of a "host country learning curve" put forward by Moran[13] which relates to the possibility of the host country acquiring technical and managerial capability over time. He noted and rightly too in my view that when the early international investments in oil, tin, copper and bauxite were undertaken, the host countries had little or no knowledge about the standard business practices in such industries. That in most cases the host countries were not experienced in handling issues in relation to technology, international corporate accounting or tax provisions to make the negotiation process meaningful. But the successful operations of the ventures, however, provided them with incentives to

13 Moran, Multinational Corporations and the politics of dependence: Copper in Chile, pp.162-169, op.cit.

develop skills and expertise appropriate to their industries. Begining with attempts to re-negotiate and tighten the early terms of operations, the host countries start to move up a learning curve that leads from monitoring industry behaviour to handling sophisticated corporate functions. As Moran puts it himself,

> "As knowledge about industry operations is accumulated, as secrecy is dispelled and domestic confidence is gained, the monopoly position of the foreigner, even in his peaks of strength, is eroded."[14]

Consequently, as the host country moves up this learning curve of bargaining skill and operating experience, its relation with the MNOC changes drastically. The result is a shift of power away from the MNOC toward the host country. In our analysis of the petroleum development contracts in this study, we will attempt to see how the "learning curve" of the Nigerian oil industry fits in with this hypothesis.

With this in mind, we will in the ensuing paragraphs briefly outline some of the issues and debates surrounding the activities of Multinationals in general and their significance and implications for development in the host countries are also sketched. It is pertinent to state that petroleum multinationals are not different from other types of Multinationals. Thus, what is to be discussed below applies to them

14 Ibid, at p.166.

as well.

1.2 STRUCTURE AND ACTIVITIES OF THE MULTINATIONALS.

1.2.1 LEGAL PERSPECTIVES ON MULTINATIONAL CORPORATIONS.

In a strictly legal sense, a MNC can most simply be characterised as an aggregate of corporate entities, each having its own juridical entity and national origin, but each in some way interconnected by a system of centralised management.[15] Thus, even though a 'corporation', in the true sense is a legal entity, the essence of the multinational enterprise is that it is a "political and economic fact which expresses itself in a variety of legal forms and devices, yet has no coherent existence as a legal entity."[16] This means that the particular legal status attributed to a corporation is not strictly speaking applicable to the entity as a whole, made up , as it is of a number of separately incorporated entities.

Generally, the parent corporation and its subsidiaries are treated by most legal systems as separate and distinct legal entities. This is true even if the parent owns all the stock of the subsidiary and management of the corporations is identical.[17] However, there are instances when the corporate veil will be pierced, for

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15 Wallace, C.D.,Legal control of the multinational enterprise Martinus Nijhoff Publishers London.1982 p.12.

16 Hadari, Y., " Legal structure of the Private Multinational Enterprise." Michigan Law Review 1973 p.729.See also Salomon V Salomon & Co. 1897 A.C.22 which favours the theory of separate legal entity of a corporation.

17 See e.g. Fisser V International Bank 282 F. 2d 231 (2 cir 1960); Brown V Margrande Compania Naviera 281 F. Supp 1004 (Ed Va 1968) and Smith, Stone and Knight Ltd V Birmingham Corporation. (1939) 4 all E.R. 116.

example when the corporate device are been used to defraud creditors, to evade existing obligations, to circumvent a statute, to achieve or perpetuate a monopoly or to protect knavery or crime.[18] The British Courts too, have on some occasions pierced the corporate veil and found British Subsidiaries to be the agents of the American parent corporation.[19]

Commenting too on the legal structure of the MNC, Jessup remarked that, "it is the very complexity of its legal structures, or rather of the interplay of legal entities and relationships constituting that structure, no less than the size of its resources or the scale of its operations, which makes its power so elusive and so formidable a challenge to the political order and rule of law".[20] It is consequently inevitable that the economic strength and legal nature of MNCs should again in the words of Jessup, "sometimes be tempted to take advantage of the complexity of political and legal systems to create a world of their own which must accommodate itself in the conduct of its operations to many legal systems but is not in any real sense subject to any of them."[21]

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18 For evasion of contract cases see-Dairy Cooperative Association V Brandes Creamery 147 Oregon 488, 30 P. 338. 1934. For evasion of statute, see Chicago M.& St.P.Vs Minneopolis Civic & Commerce Association 244 U.S. 490. and Northern Sec. Co. V United States 193 U.S. 197 1904 for attempt to evade antitrust laws through subsidiary company. For detailed discussion in this area see T. Walde, "Lifting the Veil from Transnational Mineral Contracts: A Review of the Recent Literature" 1 Natural Resources Forum 281, 1977.

19 See In Re P.G. (Films) Ltd.1953 1 WLR 483 For emphasising thin capital and Firestone Tyre & Rubber V Llewellyn 1957 1 WLR 464 for evasion of tax purposes.

20 Jessup, J,. " Transnational law in a changing society. Essays edited by Friedmann et al. New York 1972 at p.72.

21 Ibid at p.72.

The recognition, in the above statement that the MNC "must accommodate itself in the conduct of its operations to many legal systems" is interesting as the complexity of doing business simultaneously under a variety of differing legal systems poses its own particular difficulties for the centralised management which is characteristic of multinational operations, and provides a significant source of control over these operations. The statement that the MNC is accountable to a number of different national legal systems is, however, immediately countered by the remark that it "is not in any real sense subject to any of them." One is thus left with the impression that the existing legal order is inadequate to control MNCs and that such corporations are not in the real sense subject to any legal system. One must guard against having this false notion that the MNC, in its individual corporate activities, suffers no legal constraints. It is, infact subject to the laws of each and every country in which it carries on business. It is only the enterprise as a complete unit- that is, in sum of all its individual corporate parts- which does not come under the control of a single comprehensive international authority. The only recent development or attempt towards that direction has been the United Nations Code of Conduct for transnational corporations.[22]

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22 United Nations Code of Conduct on Transnational Corporations UNCTNC. U.N. New York Sept. 1986. But for fuller account on this see Nixson, F.I., " Controlling the Transnationals? The U.N. Code of Conduct in Ghai, Y.P., et al (eds), The Political Economy Of Law: A Third World Reader. Oxford Press. Delhi. 1987.

The code sets out to establish international standards for conduct of international business conglomerates. This is in realisation of the difficulties facing particularly developing countries in regulating the activities of MNCs.

The primary objective of the code include, inter alia, to stamp out tax evasion, restrictive business practices, illicit payments and abusive transfer pricing activities by MNCs. It also sets out to minimise any negative effects associated with the activities of these corporations as giant economic units. Thus Article 21 of the Code stipulates thus;

> "Transnational corporations should/shall make every effort so as to allocate their decision making powers among their entities as to enable them to contribute to the economic and social development of the countries in which they operate."[23]

However, the snag is, as resolutions of the U.N. General Assembly they are merely declaratory and not legally binding on the MNCs. There is also no principle of international law that can be relied upon by a host state to compel these corporations to abide by it. Thus, as it stands, the host countries have no other option than to try and regulate the activities of the MNCs on an individual country or through regional basis, e.g. by way of exchange of information, tax securities, etc.

1.2.2 THEIR ORGANISATION AND STRUCTURE.

The growth and spread of MNCs, their organisational form

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23 Ibid Article 21 U.N. Code of Conduct.

and success stories in terms of huge profits have engendered considerable concern not only in the host countries where they operate but also in their home countries. The concern stems from certain features of these corporations and their implications, which will form the subject of our discussion in the following paragraphs.

A central characteristic of the very large MNCs is their tendency to have a sizeable cluster of foreign branches and affiliates. It is contended that while almost half of some 7,300 MNCs have subsidiaries in one country only, nearly 200 MNCs, among the largest in the world, have subsidiaries in twenty or more countries.[24] The control which the parent companies are able to exercise over their subsidiaries as a result of modern communication facilities means that subsidiaries in foreign countries are generally simply branch offices obeying the dictates of their parents. Thus decisions, such as, on output levels, product lines, markets served, investment and re-investment, financial flows and choice of techniques, etc, are all ultimately decided by the parent in the metropole. By implication, such decisions are less likely made by the executives of the parent company in the metropole with the welfare or interests of any particular host country and its citizens as the primary consideration. Rather, the entity whose interest will be

24 Taken from Jenkins, R.O., Transnational Corporations and uneven development. The internalisation of capital and the Third World. Methuen London 1987. p.5.

paramount in such decisions is the global corporation itself.[25]

The decision variables of the MNCs may have profound significance for the host country of its subsidiary. This is particularly so when the subsidiaries are large in relation to the host economy and when they are concerned with the exploitation of the country's major and most lucrative resource. A classic example is the control by the multinational oil corporations of operations of the Nigerian oil industry, where oil is the mainstay of the country's economy.

Closely related to their large size is the predominantly oligopolistic character of the multinational corporations.[26] When a company is an industry which is an international oligopoly, and especially one with extensive vertical integration like oil, the decision, for instance, to restrict its operation to a particular market in order to prevent competition or to hold its output for other reasons may have very negative effects on the host country. Also, the large size of the global corporation, its financial muscle enables it to stifle or destroy local competition in some cases, and its marketing ability and zeal combined with heavy advertising help to sustain and maintain their oligopolistic nature.

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25 Ibid.

26 The word 'oligopoly' is a term commonly used in economics to describe a situation in which firms involved in a particular business are so few that each is aware of and therefore takes account of, the repercussions of its own actions on other partners, and adjusts its own strategy in the light of anticipated or actual actions of partners.

A further characteristic of MNCs is that they are in general products of developed countries.[27] The high percentage of concentration of MNCs in the developed countries is even more clearly revealed by the distribution of the stock of foreign investment of these firms as measured by estimated book value. For instance, in 1986, out of a total estimated stock of foreign investment of about $800 billion most of which was owned by MNCs, the U.S. accounted for more than half, and over four fifths the total was owned by five countries, the U.S., the U.K., France, Germany and Japan.[28] This in itself too reflects the high concentration of the parent companies in the developed countries where the advanced economic level and similarities in institutional and social structures have facilitated the operation of the multinational corporate system. Although a high percentage of MNCs are concentrated in the developed countries, in 1980s just under a quarter of all foreign subsidiaries of MNCs were located in the Third World.[29] Within the Third World, two countries-Brazil and Mexico account for over a quarter of the total stock of foreign investments by MNCs and eight other countries make up over half. Most of these countries fall into two categories viz, (1) those which have a large and rapidly

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27 For instance, it is contended that eight of the ten largest MNCs are based in the U.S. The U.S. alone accounts for about a third of the total number of these firms, and together with the U.K., France, Germany and Japan they account for over three quarters of the total. See MNCs in World Development U.N. Report. op.cit. p.171.

28 See World Development Report 1986, Published for the World Bank, Oxford University Press, P.37.

29 This information draws on UNCTC Transnational Corporations in World Development. Third Survey. New York. U.N. ST/CTC/46 1983.

growing industrial sector and (2) petroleum exporting countries. For instance, it is estimated that, in the Middle East which accounts for 9.4 per cent of the total foreign investment in developing countries, petroleum accounts for approximately 90 per cent of the total stock of foreign investment. On the other hand, in Latin America (with 36 per cent of the total) 39 per cent of foreign investment is in manufacturing 28 per cent in petroleum, and 10 per cent in public utilities. In Africa, (with 20 per cent of total) 39 per cent is in petroleum, 20 per cent in mining and smelting, and 19 per cent in manufacturing.[30] This aggregate picture shows that the MNCs are concentrated mainly in the extractive industries. These include e.g. the Copper Mines in Zambia and Chile, precious stones (gold) in South Africa, bauxite in Jamaica and oil in the Middle East.

Sporadic data examined also show that despite their presence and operations in such key sectors, the contribution of foreign subsidiaries to the total Gross National Product (GNP) in most host countries is relatively small.[31] Indeed, it is stated that, in the 1980s the sales of the largest 100 MNCs grew faster than the GNP of the non-socialist countries of the world.[32] These MNCs are said to earn a higher rate of return from their subsidiaries in TWCs than they get from their

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30 Taken from Stopford, J and Dunning J., Multinationals: Company performance and global Trends. London, Macmillan, 1983.

31 See UNCTC Third Survey 1983 op. cit. and also Times 1000 Leading Companies; A World Bank Publication, 1986 cited in R.Jenkins Transnational Corporations and Uneven Development, op.cit. p.8.

32 Jenkins Ibid p.9

parent companies in the developed countries. U.S. data show the following differences in the rates of return of the MNCs operating in the different regions of the world.

Table 1.1

	Rate of return(%)	
	1979	1980
All Areas	21.8	18.3
Advanced Countries	32.7	37.1
Third World Countries	45.5	44.6
TOTAL	100%	100%

Source: U.S. Department of Commerce, Survey of Current Business. August, 1981. Volume 16. No.8 (Table 7) p.27.

The high rates of profit overseas plus cheap raw materials coupled with cheap labour are amongst the reasons why the MNCs operate in different countries.[33] Given such huge profits, their sizes, their need for global planning, etc, the MNCs are led to desire to control their operations and this will engender political interference in the host countries.[34] The size of these corporations and their financial muscle give them the means to manipulate the political situation in a country to their advantage. For example in 1970, the International Telephone and Telecommunications Company (I.T.T.) was said to have meddled greatly in Chilean politics. The company campaigned adversely against the re-election of President Allende because of his nationalisation of American MNCs operating in Chile. When

33 For more discussion on this see Lall, S and Streeten, P., Foreign Investment, Transnationals and Developing countries. Macmillan. London, 1977,Chapters 1 and 2.

34 This discussion draws on Fortin, C., "Law and economic coercion as instruments of international control. The nationalisation of Chilean Copper in Picciotto, S.and J. Faundez (eds), The nationalisation of Multinationals in peripheral economies. Macmillan London.1978. See also J. Faundez, Marxism and democracy in Chile, from 1932 to the fall of Allende, New Haven, London, Yale University press, 1988, especially chapter 2.

he was finally elected, the I.T.T. plotted his overthrow and murder because his policies threatened the company's economic interest.[35] Also, in Nigeria, the overthrow of Gowon's military regime and the counter abortive coup of 1976 have been attributed to disagreements between top Nigerian state bureaucrats on the one hand and the multinationals and their home governments on the other hand.[36]

Another feature of the MNCs which deserves comment and has important implications for the MNCs impact on development in TWCs is that they tend to be concentrated in technology-intensive industries and engage enormously in research and development (R & D).[37] It is, thus, not surprising that a substantial proportion of R & D activities in the developed countries is accounted for by MNCs. This does not necessarily mean that they are the major originators of inventions and innovations. In fact, it is noted that only about a fifth of a sample of post World War Two innovations were actually introduced by MNCs.[38] But yet they have played and still do play a major role in commercialising the technology. Through this practice of selling technology, they are viewed as being important conduits, actual or potential, for the transmission or transfer of technology to the TWCs. Many writers, however, differ on the specific mechanisms by

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35 Ibid.

36 See Turner, T., "Multinational corporations and the instability of the Nigerian state." 5 Review of African Political Economy. 63 1976.

37 These include mostly industries such as Oil Exploration Companies, Automated manufacturing, Telecommunications and Civil Engineering Construction.

38 Vernon, R., Sovereignty at Bay, New York: Basic Books, 1971, p.40

which such technology may be expected to be transferred to and diffused into the host Third World economies- whether it will be by deliberate or through contractual means.

It seems quite unlikely that the MNCs will deliberately transfer dynamic technology to anyone. The reason simply is due to the fear of building up potential competition and threat of eventual erosion of the advantage they possess of acquiring such know-how. In his argument supporting this view, Johnson posited that the MNC "has no commercial interest in diffusing its knowledge to potential native competitors" and argued that it cannot be expected to invest in creating new technology which might be suitable for the factor-proportions of the developing country when it already has its own.[39]

Therefore, if the MNC has no commercial interest in transferring technology, then it either does so because it is obliged to e.g. through contractual means or because such a transfer and consequent diffusion occurs in some unintended fashion. As far as the latter solution is concerned, that can happen, for instance, through concerted efforts on the part of the TWCs themselves to acquire the necessary technology. I agree with one writer, killing, when he states that the problem of technology transfer does not lie in the "hardware, blue prints, specifications, price lists, product samples, but lies principally in the dissemination of the intangible

39 Johnson, H.G." The Multinational Corporations as an agency of development, in Barbara, Ward. et al (eds), The widening gap. Development in the 1970s. New York, Columbia University Press. 1971.

know-how which is in the minds of those who use the hardware".[40] For this to be realised there need be preparedness on the part of both the seller to actually disseminate the necessary know-how and the buyer to acquire the capability.

This and other matters in relation to transfer of technology in general are examined in chapter Seven with emphasis on transfer of petroleum technology to Nigeria.

1.2.3 THE IMPACT OF MULTINATIONAL CORPORATION ACTIVITIES ON THE THIRD WORLD.

The debate over the significance of MNCs as agents of development or underdevelopment in the Third World has generated a vast literature consisting of a large number of conflicting arguments and positions. It is not possible in a brief overview to deal at any length with the comments of the many different writers on the subject. However, in the analysis that follows attempt is made to classify the writers in accordance with their emphasis on either the merits or demerits associated with MNCs and their activities in the Third World. Generally, a two-fold classification is made between those writers whose main emphasis is on the benefits which MNCs bring to TWCs and those who adopt a more critical approach, stressing on their demerits. Eventhough in practice there are many writers also who discuss both the benefits and the costs of these firms and differ only over the degree to which they want the host countries to intervene in

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40 Killing, P.," Technology acquisition licence agreements and joint ventures. Columbia Journal of World Business. 1980 at p.43.

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order to ensure that the benefits outweigh the costs. I have observed, however that the particular emphasis chosen by a writer seems in general to be related more to political ideology than to theoretical or empirical analysis. Such ideological difference is most noticeable between Marxist and non-Marxist writings, which invariably has important implications on their analysis of the MNCs.

For purposes of this study, I will refer to those writers who emphasise on the positive aspects of the MNCs as 'Pro-MNCs'[41] whereas those who adopt the critical approach as 'MNCs Critics.'[42] And writers that fall between these two groups will be referred to as 'metropolitan writers'.[43] This last group consists of writers who concede to both benefits and costs of MNCs, but disagree on which predominates.

The majority of the 'Pro MNCs' writers are uncompromising in their support of MNCs. The benefits associated with

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41 These include writers such as Reuber, G.L., Private Foreign Investment in Development. Oxford Clarendon Press.1973; Vernon, R., Storm over the Multinationals: The real Issues, London Macmillan 1977; Balasubramanyan, V.N., Multinational Enterprises and the Third World. Thames Essay.No.26 London 1980 and Jenkins, R.O., Transnational Corporations;competition and monopoly. University of East Anglia, Momeo.1986,etc.

42 These include, inter alia, Lall, S.and Streeten, P., Foreign Investment, Transnationals and developing countries. Macmillan 1977; Helleiner, G.K., The role of MNCs in less developed countries trade in technology, World Development.1975; Vaitos, C., Employment problems and transnational enterprises in developing countries: Distortions and inequality. Geneva.I.L.O. 1976; Sunkel, O., "Transnational capitalism and national disintegration in Latin America." Social and Economic Studies.1973; Frank, A.G., "The development of underdevelopment in Latin America: Underdevelopment or Revolution?" New York, Monthly Review Press 1969; Onimode, B., et al (eds), Multinational Corporations in Nigeria. Ibadan. Les Shyraden Nigeria Ltd 1983; and Picciotto,S.and Faundez,J.(eds), The nationalisation of multinationals in peripheral economies, op.cit.

43 See for example- Biersteker, T., Distortions or development? Contending perspectives on the Multinationals corporation. Cambridge Mass M.I.T. Press 1978; Ghai Y.P., "Management cotracts" in Ghai, Y.P. et al (eds), The political economy of law op.cit.,and Nwankwo A.A., After oil what next? op.cit. 1982.

MNCs are extolled and criticisms of their disadvantages derided by these writers. They perceive the MNCs as partners in development because they argue that these firms help convey foreign capital to TWCs, transfer technology, create jobs, pay wages and taxes and above all promote industrialisation. The above expectations are derived from the roles which the MNCs have played in the past and their likely future pattern based on the orientation and economic goals of the TWCs.[44]

To most advocates of the merits of MNCs, investments overseas by such firms is a means of international capital flow which can bring about increase in foreign exchange in the host country. As a result of the capital inflow the total output of the host economy is expected to increase, and given some assumptions including that of perfect competition and no negative effects on the stock of locally owned capital, the income of host nationals after deducting the profits of the MNCs would rise too. Commenting on this point, Jenkins stated that "at a time when shortage of capital was regarded as a major obstacle to development in the Third World, foreign investment by MNCs seemed to offer an attractive way of breaking out of the vicious circle of poverty."[45] Also Reuber[46] and May[47] in their studies treat foreign investments by MNCs as additional means of foreign exchange to the host economy, with resultant increases in income and employment

44 Jenkins op.cit. FN.41 at p.8

45 Ibid at p.19.

46 Reuber op.cit. FN 41.

47 May, H., Multinational Corporations in Latin America. New York. Council of America.1975.

opportunities. In other words, through such foreign investments, the host economy would benefit in the form of taxes and wages. These benefits along with the possible transfer of technology to the host country are seen as the most beneficial effects from MNCs activities. The employment benefits alluded to above by Reuber and May are also echoed in the arguments of other 'Pro MNC' writers,- Johnson[48] and Caves.[49] They see the employment benefits as one of the three important benefits likely to accrue to a host country from MNC activities. The second benefit, in their opinion, is the diffusion of technology to consumers who may need to be taught how to use the firm's products effectively e.g. agricultural machinery. The third benefit is the provision of revenues through the means of taxation, which Johnson and Caves see as the basic mechanism for engendering the general development desired as opposed to the uneven development the direct effects of the MNC is likely to foster.[50]

In another contribution on the benefits of MNC activities, Vernon mentions the importance of these firms in providing access to overseas markets for Third World products. He argues that manufactured or primary products, despite increasing competition, are characterised by many barriers to entry especially at the marketing stages. Therefore, in his view, without the international linkages through MNC activities, firms in

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48 Johnson op.cit. 1971.

49 Caves, R.E., "International Corporation: The Industrial Economics of Foreign Investment." Economia Volume 38 No.149 1971.

50 This discussion draws on Johnson and Caves op.cit.

the TWCs would find it difficult to penetrate some markets especially those of the developed countries.[51] The global market reach of the MNCs is perhaps explainable by the advantages which these firms possess such as access to capital, marketing through advertising, control of technology, and access to raw materials.

The effects of MNC activities in bringing "otherwise unobtainable technology and managerial experience" to TWCs is also stressed by several writers. The multinationals' capacity for large scale research and development as well as easy access to the most advanced technologies are said to commend them for enlistment in the team of partners for Third World development.[52] Notably, writers like Streeten,[53] Hood and Young[54] and Balasubramanyan[55] all stress the importance of MNCs, particularly as bearers of technology to TWCs. They argue that transfer of technology can help stimulate local efficiency and increase production in the host countries. Such increases in production or local efficiency says Streeten may arise from the greater competition which the entry of Multinational's subsidiary will induce, or by its stimulation of growth of linkages by creating opportunities for local industries to develop.

On the other hand, Hood and Young while accepting that through market competition the MNC can as well stifle or

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51 Vernon op.cit FN 38 p.105-107.

52 See Onimode op.cit. FN 42 pp.31-41 for detailed account.

53 See Streeten, P. and Lall, S. op.cit. FN 42.

54 Hood, N.and Young, S., The Economics of Multinational Enterprise. Longman London.1979.

55 Balasubramanyan op.cit.FN 41.

destroy local entrepreneurship argue that on balance, foreign investment through the MNCs creates more local entrepreneurs than it displaces.[56] This view on the negative effect of the MNC on local entrepreneurship is shared by another author, Warren,[57] who indeed describes it as the most negative effect of the activities of MNCs on the host countries. It is to more on this critique of the MNC activities that we now turn our attention.

It can be realised that the above arguments are largely sanguine about the net benefits to be gained from the MNC activities. However, other writers are critical of the MNC activities or more concerned to catalogue their costs. This approach to MNC operations is represented by writers listed in footnote Number 42. The common thread that runs through their arguments is that they view the MNC as a major mechanism blocking development in the Third World and an important obstacle to socialist transformation. They contend that the adverse consequences of activities of MNCs on TWCS include, inter alia, the pillage of natural resources, exploitation of labour, huge capital transfer from TWCS, structural distortions, political instability and cultural degradation.

The origins of this critical view can be traced back to the classical Marxist writings on imperialism in the nineteenth century with their emphasis on the concentration and centralisation of capital exports and

56 Hood and Young op.cit. p.49

57 Warren, B.,"Imperialism and Capitalist industrialisation." New Left Review.1973 p.81.

colonialism.[58] Those who belong this school of thought, argue that monopoly capitalism led to profits in the developed countries, while at the same time limiting the possibilities of expansion at home due to the restrictions imposed on expansion by cartels and trusts. This led firms to seek outlets for their surplus of capital overseas. Marx himself had associated the origin of monopoly capitalism to colonialism and considered foreign capital as a little more than an agency of imperialism.[59] This view was re-echoed by notable Marxist authors as Lenin[60] and Bukharin.[61] Lenin, in particular, emphasised on the parasitic nature of imperialism stating that the development of monopoly capitalism inhibits technical progress and leads to a state of stagnation and decay (underdevelopment) in the host countries.[62]

While Lenin emphasised on the export of capital rather than on commodity goods, subsequent writers like Luxembourg,[63] Picciotto[64] and Faundez[65] stressed on the process of capitalist competition which drove it outward in search of new markets for its products, and described in detail the process by which the traditional economy of the colonial territories were integrated within the

58 See Marx, K., Capital Volume 1 1867 Harmandsworth, penguin.

59 Ibid at p.18.

60 Lenin, V.I., Imperialism: The Highest Stage of Capitalism. Moscow Progress Publishers 1917.

61 Bukharin, N., Imperialism and World Economy. London. Merlin 1917.

62 Linen op.cit. See Chapter 8

63 Luxembourg, R., The accumulation of Capital. New York 1964.

64 Picciotto, S.et al (eds), State and Capital: A Marxist Debate. Edward Arnold. London 1977.

65 Faundez, J.," A decision without a strategy: Excess profits in the Nationalisation of copper in Chile." in Faundez, J.et al (eds) The Nationalisation of Multinationals op.cit.

capitalist fold-with the appropriation of land,[66] introduction of taxation,[67] use of cheap labour, and a commodity economy.[68]

Yet another renowned Latin American author, Frank[69] holds similar critical view of the MNCs. He rejects the advocacy of MNC as an agent of development on the ground of it being simple imperialism. Frank's main thesis is that "the underdevelopment of the underdeveloped world is directly connected to the development of the developed".[70] The same argument is echoed by Amin.[71] They both maintain that development of the industrialised world and the underdevelopment of the TWCs are two phenomena resulting from the same historical process, and for the development of the TWCs to take place, it must be done independently of the developed world. Most proponents of this view always cite as examples the history of Japan, the former Soviet Union and China, all of whose periods of industrial development took place in the absence of foreign capital or investment.

Similar comment on the activities of MNCs is documented in the works of other contemporary Marxist writers like Sweezy,[72] Hymer,[73] Onimode[74] and Rodney.[75] According to

66 See Picciotto op.cit. FN 42.
67 See Luxembourg op.cit FN 63.
68 See Faundez op.cit FN 42.
69 Frank op.cit. FN 42.
70 Ibid at p.149.
71 Amin, S., Imperialism and Unequal Development New York Monthly Review 1974.
72 Sweezy, P.,and Magdoff, H, Notes on Multinational Corporations Monthly Review 1973. 21.
73 Hymer, S.,The Multinational Corporation: A Radical Approach, Cambridge University Press, 1979.
74 Onimode op.cit. FN.42
75 Rodney, W., How Europe underdeveloped Africa. Dare Salam Tanzania Publishing House 1970.

these writers, MNCs are interested in investing in TWCS because these countries are seen as (1) sources of raw materials which could be profitably sold on world markets, (2) outlets for capital investment and (3) Markets for manufactured goods. Foreign capital, to them, is inevitably tied to its home government and its operation is antithetical to the host country's development.

Another criticism of the MNC activities is that far from supplying basic goods for the mass of the population these firms tend to concentrate only on the production of luxuries for a small elite group. The activities of the Oil Multinationals is cited as a classic example. It is contended that the tendency for the subsidiaries of such firms to generate links primarily with the parent company or other affiliates and only to a little extent with host economies, leads to development of economic structures which are not integrated at the local levels.[76]

Despite all the costs that the 'MNC Critics' have associated with the MNC activities, it might still be argued that they constitute the "wheel" of development in TWCs. Subtle defenses of their operations in this regard come from writers such as Biersteker[77] and Nwankwo,[78] who can be described as 'metropolitan writers'. Both authors contend that whatever the demerits associated with MNC activities in the TWCs, their benefits are certainly better than nothing at all. This view is also shared by

76 Sunkel, op.cit. FN 42 p.157.

77 Biersteker op.cit. FN 43.

78 Nwankwo op.cit. FN 43.

ardent defenders of MNCs who maintain that the road to development through relying on MNCs for industrialisation is a viable strategy as shown by the experiences of the newly industrialised countries of Latin America, South East Asia as well as Israel and South Africa. If the MNCs can achieve these (success story) results, so the argument goes, then they must be effective and reliable agents for the industrialisation and development of the TWCs.[79]

On the whole, while the debate over the impact of MNC activities rages on, the position of the metropolitan writers who emphasise on ways in which to maximise its benefits and minimise its costs seem in my opinion the most appropriate for policy makers and policy framers in the host countries. This is because, if one might borrow the words of Kolde, "The fact of the matter is,.... the MNC is neither all good nor all bad, and what all nations should be seeking through international law and other channels is to increase and consolidate the benefits while decreasing and eliminating the abuses".[80] And in this connection, the most influential of the arguments in defence of MNC activities, in my view is that by Vernon.[81] He reckons that in course of the historical process of relations between MNCs and host countries, the balance of bargaining power will shift to the host country over time. To buttress his argument, he cited the

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79 Akeredolu-Ale, E.O., The Underdevelopment of Indigenous Enterpreneurship in Nigeria. Ibadan University Press. 1985.

80 Kolde,E.J., International Business Enterprise . Englewood Cliffs. Prentice Hall. 1973 at p.186.

81 Vernon op.cit. FN 38.

demise of the days of 'foreign investment and its partnership with the flag' i.e. direct foreign investment as an example.[82] Furthermore, the historical trend that Vernon sees for host countries to re-negotiate the early contracts with MNCs and demand more of the profits realised from exploitation of their resources when that time reaches is also in my opinion accurate. The Organisation of petroleum exporting countries'(OPEC) assumption of power of control of world oil market from the erstwhile powerful international 'majors' (MNOCs) is a classic example. (This and other changes that have occurred in the history of the international petroleum industry are discussed in chapter Two.) The tendency to re-negotiate or take other measures to ensure greater benefits for the host country comes about largely because most of the initial agreements in TWCs were negotiated with the MNCs under colonial or neo-colonial auspices. The emergence of more independent states, their growing expertise and increasing awareness of how unfavourable to the host countries the early contracts or agreements were, and coupled with the swings of the balance of bargaining power in their favour inevitably engender moves to redress the inequities. The international oil industry, which is uppermost on the mind of Vernon, is in fact a classic example of exactly this process at work. Thus we will come to realise this fully when we examine the petroleum development contracts between Nigeria and

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82 Ibid p.49.

the MNOCs as a model of the relations between them based on their bargaining strength over the years.

CHAPTER TWO.

NIGERIAN FOREIGN INVESTMENT POLICIES AND PETROLEUM INDUSTRY.

2.1 INTRODUCTION:

In this chapter, a broad overview of Nigerian foreign investment policy in general and Government's policies in the petroleum industry is provided. Since Nigeria is a member of OPEC, the role of the Organisation in influencing these policies as well as its impact on the structure of the international oil industry are also discussed. Government policies in these areas are regarded as important for two reasons: (1) The policy guidelines of government towards the industry are crucial factors in understanding the development and evolution of the industry. (2) As already mentioned in chapter one, a look at the government policies towards foreign investments will also serve as pointers to our understanding the framework within which the petroleum contracts we will later examine are shaped.

2.2 NIGERIAN FOREIGN INVESTMENT POLICIES.

Nigeria's foreign investment posture have been a subject of much documentation over the years, especially since oil became a major part of its exports.[1] Our aim here is not to treat the subject in detail but to highlight some of the important policy areas that relate to this study.

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1 See Proehl, P.O., Foreign enterprises in Nigeria: Laws and Policies, Chapel Hill, University of North Carolina Press, 1965; Akeredolu-Ale, E.O., "Private foreign investment and the underdevelopment of indigenous entrepreneurship in Nigeria" in Williams G.,(ed) Nigeria: Economy and society, Rex Collins, London, 1976; Akinsanya, A., Economic independence and indigenisation of private foreign investments: The experiences of Nigeria and Ghana, Praeger, New York, 1983; Teriba,O. and Kayode, M.O., Industrial development in Nigeria: patterns, problems and prospects, Ibadan Press, 1977 and Sanda, A.O., The challenge of Nigeria's Indigenisation, 1982 to mention but a few.

Like in most past colonies, the colonial and immediate post colonial economic scene in Nigeria was characterised by technological limitations, capital shortages, lack of expertise and a paucity of skilled manpower. It was against this background that the British Colonial government adopted a "liberal" (i.e. "open door") policy toward private foreign capital.[2] Undoubtedly, the foreign investors took advantage of the policy and invested in manufacturing, commodity processing and mineral extraction, and in consequence, they became dominant in the Nigerian economy. The immediate post-independent Nigerian government saw the policy as appropriate and continued to maintain it. But the government added the requirement that these foreign investors should provide jobs to as many Nigerians as possible, which later was intensified and became known as the "Nigerianisation" policy.[3]

The major policy objective of the government at the time was to industrialise as a means of promoting rapid and orderly economic development. It introduced measures to involve both public and private foreign investors in the economic development scene. This was well spelt out in the country's First National Development Plan as follows,

> "Nigeria's economy is a mixed one. The government have taken an active part not only in providing the social but also the basic economic services, such as electricity and ports. The attitude of the government however, is entirely pragmatic and accepts the

2 See Proehl op.cit. p.159.

3 Ibid, p.24.'Nigerianisation' means the replacement of foreign manpower by Nigerians in various levels of government and management. This policy was originally conceived in the wake of the various nationalist movements which preceded the grant of political independence in 1960. This pressure for Nigerianisation intensified even after independence especially on the part of the opposition party.

> desirability of a mixed economy. At the same time, the government is convinced that no amount of government activity can effectively replace the efforts of a broadly based and progressive private sector".[4]

At the same time, efforts were made to create conducive atmosphere for direct foreign investments and protecting local industries. This was backed by liberal industrial legislations granting economic inducements to investors ranging from complete tax exemptions, tariff protection schemes, tax holidays, guarantees on capital transfer and protection against expropriation.[5] In return for these series of incentives provided by government, the country witnessed a tremendous upsurge in the number of private foreign enterprises in the country.

An industrial and financial survey of 625 manufacturing firms operating in Nigeria in 1968 showed that out of a total paid-up capital of $179.8 million, private foreign investors accounted for almost 70 per cent. Of this figure, about 51 per cent was British, 20 per cent American and 22 per cent Western European. The remaining 7 per cent was held between Syrians, Lebanese and Indians.[6] In another independent study of the ownership and control structures of 1,320 companies (80 per cent) of all companies registered in the country in 1970 it was found that on estimate non-Nigerians held 40 per cent of the total value of shares as

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4 First Nigerian National Development Plan 1962-68, Lagos, Federal Ministry of Information, at p.21.

5 These legislations included the Aid to Pioneer Industries Act 1952; the Industrial Development (Import Duties Relief) Act 1957; the Industrial Development (Income Tax Relief) Act 1958; and Customs (Drawback) Regulations 1958, among others.

6 Industrial Survey of Nigeria, Lagos, June 1968; Federal Office of Statistics, Lagos, 1970; Economic and Financial Review, Central Bank of Nigeria, Lagos, 1968 at p.77 and Hilton, F., Perceptions of Foreign Investment in Nigeria in Sauvant and Lavipour (eds) 1976 p.146.

against 33 per cent by Nigerians. Similarly, foreign institutions and firms held 29 per cent as against 7 per cent by Nigerian firms and institutions. Thus, whereas the combined holding of non-Nigerians was above 60 per cent that of Nigerians was below 40 per cent.[7] The overall pattern of ownership in these investments were foreign dominated. There was no change in the picture of large foreign ownership and participation even as late as 1971, eleven years after Nigeria's independence.[8] It is quite clear in the light of these facts, that members of the indigenous business community, government officials, politicians and the intelligentsia in Nigeria should demand a change of the country's investment policies in favour of Nigerians.

In the early 1960s Chief Awolowo, the then Federal Minister of Finance is on record as having said to foreign investors: "Come to our aid in the meantime but in due course we will buy you out."[9] In 1970, a military government in which Awolowo was one of the most influencial figures in the economic policy-making, now started to put into effect the view which he had first expressed at a time well before the country's oil potential was fully appreciated. With increasing petroleum exports and substantial foreign exchange inflow in the 1970s, it was not surpising to see a

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7 See Teriba, Edozien and Kayode, "Some Aspects of Ownership and control structures of business enterprise in a developing economy: the Nigerian case", 14 Nigerian Journal of Economic ans Social Studies, 1972, p.3 reprinted in Teriba and Kayode, (eds), Industrial Development in Nigeria: Patterns, Problems and Prospects, p.89, op.cit.

8 Another writer notes that at the begining of the 1970s a majority interest was held by the United Africa Company (UAC) Group in 29 companies, by Lonrho in 24 companies and by John Holt in at least 10. All the oil industry was in foreign ownership. See Sanda, A.O., The challenge of Nigeria's indigenisation, op.cit.,pp.12-13.

9 Awolowo, O. quoted in Phillip, C.S.Jnr., The development of Nigerian Foreign Policy, Evanston, 1964, p.46.

military government which comprised of some politicians including Awolowo who had been outspoken towards private foreign investment in the past, pursue a path that ultimately led to the policy of indigenisation to be adopted. A new breed of civil servants, professionally qualified and trained, working under a strong nationalistic sentiment at the time, lent their support to the introduction of such policy. This was how the Nigerian Enterprises Promotion Decrees 1972 and 1977, which still form the bedrock of the country's investment policy came to be introduced.[10] This and other recent steps taken to encourage investment and measures by which the policy of indigenisation is to be attained in Nigeria will be considered in the ensuing paragraphs.

2.2.1. ACCOUNT ON THE NIGERIAN ENTERPRISES PROMOTION DECREES.

The Nigerian Enterprises Promotion Decree (NEPD) 1972 was the first practical legislative step taken by Nigeria towards the development of an economy largely dominated by Nigerians. The objectives of the Decree were derived from the Second National Development Plans of 1970-74 which conceived "indigenisation" as a logical continuation of the "Nigerianisation"[11] policy on the political front which started soon after the World War 11. The NEPD was promulgated in February 1972 to fulfil the Second Development Plan's objectives. These objectives are: the

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10 They are commonly referred to as the Indigenisation Decrees'.'Indigenisation' in this context refers to the indigenisation of ownership of foreign investment and can therefore be defined for present purposes as the transfer of proprietary interests in economic enterprises located in Nigeria from foreign into indigenous ownership.

11 For the meaning of 'Nigerianisation', see FN 3 *supra*.

creation of opportunities for indigenous businessmen; the maximisation of local retention of profits through a reorganisation of the ownership structure of the economy in favour of domestic capital; and the raising of the level of industrial intermediate capital goods production. The last was to be achieved by compelling the alien business community to move into more capital-intensive and more technologically advanced production, particularly in manufacturing.[12]

To compound the overall intentions of indigenisation, in a widely quoted speech, General Gowon, then head of state, during a state visit to Britain in 1973 provided an official summary of the perceived essence of the 1972 Indigenisation Decree. He posited that the government was consolidating political independence by doing all it could to provide more participation by Nigerians in economic life while attracting investment in sectors of the economy where Nigerians are not yet able to rely on themselves.[13] Furthermore, a strong economy controlled by the indigenuos business sector was seen by officials of the Gowon government as a cornerstone of domestic political stability and economic independence. Indigenisation, as an expression of economic nationalism, therefore, is meant to remove the dominance of the economy by foreigners and to put ownership and, as much as possible, control into the hands of Nigerians while leaving room for foreign participation or partnership in those sectors where

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12 See The Federation of Nigeria Second National Development Plan 1970-74, Federal Ministry of Information, Lagos, at p.3

13 General Y. Gowon as quoted by Collins,P., "The Policy of indigenisation, An overall view," 9 Quarterly Journal of Administration, 1975 , p.137.

this was considered desirable.[14] Successive Nigerian governments have also been quite clear on the necessity of economic independence and domestic political stability, which is hardly surprising given the traumas which were experienced by Nigeria during her civil war years from 1967-70. Accordingly, it has been argued that while political self-determination is desirable as the inalienable right and ultimate goal of any country, what is needed to make it meaningful, and to translate available resources into national prosperity is a firm economic base. Thus, in the government's view this economic base can only truly benefit the country if it was formed and controlled largely by Nigerians.

The foreign investment regulatory regime in most developing countries nowadays usually operate on similar premise. Depending on each individual countries' political ideology or investment policy, the threats from foreign domination through foreign investment are met by either "expropriation" of the investment, "indigenisation" or "cartelisation" on the OPEC model. As we will later discover, Nigeria in addition to choosing the indigenisation policy, adopts the cartelisation policy with respect to her oil industry through her membership of OPEC. Thus, the common denominator of these countries' responses is a policy of less dependence by greater or exclusive involvement of domestic capital,

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14 See Brigadier Shehu Yar'Adua, Keynote Address to the conference on Indigenisation, in Nigerian Institute of Management in Nigeria, September, 1976, p.11.

technological and managerial expertise in their development process.[15]

The right of Nation States to regulate foreign investment in any of the aforementioned ways is well established and is regarded as an attribute of Statehood itself. The competence of States in this area has been recognised in numerous General Assembly Resolutions[16] and international conventions,[17] and is attested to by the vast number of measures taken, unilaterally or on an international basis, which presuppose the competence of the State in the economic sphere. For example, State sovereignty and the principle of sovereign equality of states are translated in the economic arena into, *inter alia,* the right to regulate foreign investment and the right to nationalise foreign investment provided that "prompt, adequate and effective" compensation is paid for any property taken from the foreign investor.[18]

Having said that, we will now proceed to examine the provisions of the NEPD 1972 and its subsequent amendments and partial repeal in the 1980s, ending with the NEPD 1989.

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15 See, Osunbor, O.A., "Nigeria's investment laws and state's control of Multinationals", 3 I.C.S.I.D. Rev. Foreign Investment Law Journal, 1988, p.40.

16 See for example, G.A Resolutions on Permanent Sovereignty over Natural resources, G.A. Res. 1803 (XVII) of 1962, G.A. Declaration on the establishment of a New International Economic Order, G.A. Res.3201 (S-V) 1974, the Charter of Economic Rights and Duties of States, G.A. Res.3281 (XXIX) 1974 and the U.N. Code of Conduct for Transnational Corporations, especially article 52, (U.N. Doc.E/C10/AC.2/8 of 1978).

17 See the Articles of Agreement of the World Bank, Convention on Settlement of Investment Disputes between States and Nationals of other states 1965 (U.N.T.S.159), Treaty of Rome (U.K.T.S. 15 1979, U.N.T.S. 298) and other such agreements that provide for regional economic cooperation and investment promotion and protection agreements of Nation States.

18 See Beveridge, F.C., "Taking control of foreign investment: A case study of indigenisation in Nigeria", 40 International and Comparative Law Quarterly, 1991, p.303. It needs be stressed here that the protection of investments (whether local or foreign) from expropriation has always been maintained in Nigerian Constitutions and in the current 1979 Nigerian Constitution as amended by Decree No.1 of 1984, such guarantee is set out in Section 40(1).

2.2.2. PROVISIONS OF THE INDIGENISATION DECREES

The NEPD 1972, launched on the 13th of February 1972, as expected, listed those enterprises that are within the competence of Nigerians and are not capital intensive. Such enterprises were assumed to be within the ability of Nigerians to buy directly or with money which the government was willing to lend, or with credits which the government decreed the commercial banks to provide. The Decree categorised the enterprises into two Schedules according to their level of complexity and capital intensity. It reserved wholly for Nigerians all the 22 enterprises listed in Schedule 1. These included advertising, bread and candle making, road transport, laundering, the media and retailing, to mention a few. Under Schedule II of the 1972 Decree, 33 types of businesses were to be owned and managed on a partnership basis. The NEPD required that all those businesses under Schedule II that were owned by foreigners must sell 40 per cent of the equity shares of their businesses to Nigerians. The Decree barred aliens under Schedule II if their turnover or share capital were not more than N1,000,000 and N400,000 respectively. What it sought to achieve under this Schedule was the retention of the expertise and capital of the former foreign owners, by allowing them to own 60 per cent interest in the businesses. The businesses listed in Schedule II included, *inter alia*, domestic air traffic, shipping, construction and a wide range of basic commodity producing low technology manufacturers (furniture, matches, cement, etc.).

Above all, the aim of the 1972 Decree was clearly to put small and medium-scale businesses into Nigerian control. But by implication, businesses not listed by either schedule permitted 100 per cent ownership by foreigners. Such businesses not mentioned in the Decree include high-profile foreign subsidiary firms operating in high-technology, capital intensive activities like the oil industry, banking, insurance and large-scale manufacturing industries.

For the purpose of implementing and enforcing its provisions the Decree established the Nigerian Enterprises Promotion Board (NEPB) at the federal level, which in turn was assisted by Committees at the state levels. However, a number of problems were identified in the course of implementation of the Decree. The provisions themselves contained a lot of loopholes amongst which were lack of machinery for proper valuation of enterprises up for sale, lack of credit facilities from banks to most potential buyers, the arbitrary scheduling of the businesses and the omission of some from the schedules and inadequate monitoring due to absence of inspectors.[19] While a number of foreign firms doubtless availed themselves of the opportunities provided by these loopholes in the Decree, others were prepared to flout the provisions. Some commentators averred that implementation was also marred by some Nigerians through such acts as the amassing of shares by few individuals, fronting[20] and corruption.[21] Thus the

19 Megwa, S.A.,"Foreign direct investment climate in Nigeria: The changing law and development policies", 21 Col. Journal of Transnational Law, 1983, pp.488-489.

20 See Sanda, op.cit. p.40.

21 Biersteker, T.J., "The illusion of state power: Transnational corporations and the neutralisation of host countries", 17 Journal of Peace Research 1980, p.207.

indigenisation programme was criticised for failing to widen Nigerian participation in the economy. There was clearly general concensus that the NEPD 1972 had failed to achieve its purpose. After three separate ammendments, it was repealed and replaced by the NEP Act 1977, following the recommendations of the Industrial Enterprises Panel which was set up to examine the 1972 NEPD implementation.

The 1977 NEP Act provided for a continuity of the indigenisation policy following the pattern of the former legislation but it added new provisions that both tightened up and increased the restrictions on foreign investors in the country. The major addition in the 1977 Act was the increase in the number of Schedules from two to three. The Schedule 1 of the 1977 Act included all activities which had been covered by Schedule 1 of the 1972 Decree and also some which had appeared in the earlier Schedule II. It also added some new businesses such as hairdressing, radio, newspaper and television operation. Again the emphasis was on small and medium-scale enterprises. Schedule II comprised businesses in which though within the competence of Nigerians, foreign participation is considered desirable from the point of view of their potential capital contribution as well as managerial and technical expertise. While under the earlier legislation (NEPD 1972) a 40 per cent Nigerian interest in the businesses listed in Schedule II were required, the 1977 Act provided that a 60 per cent indigenous holding should be achieved in the businesses listed under the new Schedule II. The new Schedule III consisted of businesses previously unaffected such as the technology-intensive sectors- manufacturing of chemicals, drugs, glass, motor vehicles, oil servicing and marketing, among others. It stipulated that ownership of these by Nigerians must not be less than 40 per cent, since it is realised that the local capital and technology required to operate these businesses are lacking and the only way they can be developed is by encouraging and permitting the highest level of foreign participation. Thus contrary to the 1972 Decree which permitted complete foreign ownership in residual enterprises, foreign investment in Nigeria today can in theory only be in a 'joint venture' form.[22] Any business not specifically mentioned in either Schedule I or II of the 1977 Act is deemed to fall within the ambit of Schedule III.[23] For instance, whereas most multinational investments in the commercial and manufacturing sectors now take the form of joint venture equity participation, investment in the petroleum exploration and production industry is undertaken by way of joint participation agreements, production sharing and risk service contracts with the MNOCs.[24] Companies engaged in petroleum exploration and production were allowed to engage in such other investment agreements as production sharing and risk service contracts as a form of inducement, considering the strategic importance of that sector as the commanding height of the country's economy.[25]

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22 See Osunbor,op.cit. p.53.

23 A clause to this effect is listed as item 43 in Schedule 111.

24 More discussion of these petroleum development agreements are contained in chapters 5 and 6 infra.

25 This is because since 1982 crude oil exports accounted for not less than 90 per cent of Nigeria's GDP.

Generally, apart from the stiff resistance by few local subsidiaries and affiliates of MNCs,[26] the rate of implementation of the 1977 Act is said to have been much higher than under the 1972 Decree. For example it is estimated that 1,200 foreign firms were affected by the provisions of the 1977 Act and that over 800 new foreign firms have come into existence between that time and 1983.[27] The NEPB in its Eighth Progress Report on the implementation of the 1977 Act recorded a satisfactory level of compliance by the businesses affected and added that most have been issued with either a provisional or final certificate of compliance with the Act.[28] The level of success achieved may not be unconnected with the fact that most MNCs had already become familiar with the tide of indigenisation or nationalisation elsewhere even before the maturing of economic nationalism in Nigeria. Most MNCs had conditioned themselves to demands for local participation in the older nations of Latin America and India and were no longer reluctant to share their ownership of subsidiaries so long as there were other means of retaining control.[29] Commenting on this point with reference to Nigeria, Biersteker posited that MNCs in Nigeria have "developed a range of defensive strategies which effectively neutralise the Nigerianisation policy". He itemised these strategies as technical service

26 For instance when the 1972 Act increased indigenous holdings in the banking and insurance sectors from 40 to 60 per cent, the Chase Manhattan Bank and American International Insurance Company refused to accept the increase and subsequently pulled out of the country.

27 See Sanda, op.cit. pp.61-62.

28 NEPD 8th Progress Report on the implementation of the 1977 Act, 1983 at p.1.

29 Wallace, C., Legal control of the Multinational Enterprises, Martinus Nijhoff Publishers, 1983, p.54.

agreements, fronting, alteration of voting rights, bribery and flagrant violation.[30]

2.2.3 RELAXATION OF THE INDIGENISATION POLICY IN THE 1980s.

The investment climate in Nigeria witnessed a considerable decline during the 1980s. The global recession and a chronic shortage of foreign exchange, resulting in particular from the fall in the price of oil, combined to produce a shortage of investors willing to enter the country. In order to improve the situation, the Nigerian government made no attempt to intensify further the indigenisation programme, instead many of the restrictions imposed on the foreign investments were relaxed or removed.[31] This process began in 1981 when a number of activities were reclassified from Schedule II to Schedule III of the 1977 Act, thereby increasing the degree of participation of foreign interests in those activities from 40 per cent to 60 per cent. Other measures were taken by Government in the face of such falling investment flows to encourage foreign investment. In 1986, Government established the IMF-World Bank sponsored Second Tier Foreign Exchange Market (SFEM) to try and improve the availability of convertible currency.[32] In 1987, the amended Nigerian Enterprises Promotion (Issue of Non-voting Equity Shares) Decree provided that enterprises could raise capital by the issue of non-voting shares from indigenous or foreign sources in spite of the provisions of

30 Biersteker, op.cit. p.3.

31 Beveridge, op.cit. p.320.

32 See Second Tier Foreign Exchange Decree 1986, Decree No.23 of 1986, Federal Republic of Nigeria, Official Gazette No.47, Vol.73. As a consequence, the Nigerian currency-(Naira:N) suffered a heavy devaluation against the US$. The rate of exchange of the Naira is now determined at a weekly auction (FOREX market) supervised by the Central Bank.

the NEPD 1977, provided that the shares were paid for in foreign currency.[33] In 1988 steps were also taken to facilitate the establishment of new enterprises in Nigeria by streamlining approval and screening procedures. As part of this package of measures a new Industrial Development Co-ordinating Committee was established to ensure that new investments could be screened within 60 days and to cut down on unnecessary bureaucracies at this stage.[34] And in the same year, Government signed a Memorandum of Understanding (MoU) with the foreign oil companies which contains fiscal incentives for new investments.[35] This was necessary because by the 1980s, oil had become the centre piece of the nation's economy by accounting for over 90 per cent of the country's foreign exchange earnings.

The biggest move, however, came in 1989 when the indigenisation Act was amended so that only one list of scheduled enterprises has been retained, instead of three.[36] The scheduled enterprises are those exclusively reserved for Nigerians. Foreign participation in those businesses are prohibited unless the value of the enterprise exceeded N20,000,000. In addition, foreign investors are permitted to own up to 100 per cent equity in any unscheduled enterprises with the exception of banking, insurance, petroleum

33 See Section 6 of the NEPD 1987, No.34, Federal Republic of Nigeria, Official Gazette, Vol.74 No.66.

34 These measures were set out in the Industrial Development Coordination Decree 1988, Decree No.36 of 1988, Federal Republic of Nigeria, Vol.75, No.64.

35 The MuO guarantees a minimum after-tax profit margin of $2 per barrel for the oil companies in exchange for stipulated exploration commitments. It also maps out five-year plan of exploration and capital investment designed to increase production and reserves. For more on this, see, Financial Times March 16, 1990, Supplement on Nigeria,pp.vii-vii.

36 See Section 1 of NEPD 1989, Federal Republic of Nigeria, Decree No.54 of 1989, Supplement to Official Gazette No,76, Vol.76.

exploration and production, where a 40 per cent limit on foreign involvement remains in place.

These measures, according to incumbent President Babangida, are designed to boost the country's privatisation programme, speed up a debt-conversion scheme and reinforce the role of the foreign investment in the economy.[37]

There is no doubt the above measures will serve as the focal points for private capital flows to the country. In all probability Nigeria will continue to rely on foreign investment especially in its oil sector to finance her need for capital investment necessary for her economic growth for the forseeable future. Nevertheless, the conditions that impeded foreign investment flows in the past decade will not vanish simply because the indgenisation programme has been liberalised. Since the indigenisation policy is shaped in the larger political and economic context, its success in attracting foreign investors and meeting its objectives will depend to a large extent on whether broader regulatory reforms in other areas, political stability and diversification of the economy are instituted to improve the overall investment (whether local or foreign) climate in the country.

2.3. IMPACT OF OPEC ON NIGERIAN OIL POLICIES

Because of the vital role of OPEC in the formulation of Nigeria's oil policies or operations, discussion on OPEC becomes essential as a prelude to our analysis of its impact

37 This was contained in the President's Budget Address on January 10, 1989 reported in Financial Times January 17, 1989 p.12 under the caption, "Nigeria eases curbs on foreign investment". All these measures announced by the President were necessary because for instance figures for Nigeria's foreign debt as at March 1992 stood at $35 billion. See Financial Times March 23, 1992, Supplement on Nigeria.

on Nigerian oil policies. It is now proposed to devote the following paragraphs on the evolution of OPEC and its impact on the international oil scene in general.

2.3.1. OPEC AND THE CHANGES IN THE INTERNATIONAL PETROLEUM INDUSTRY.

The petroleum industry is one of the world's largest and most important. This is because modern civilization depends on petroleum and natural gas more than any other single commodity. Since its arrival on the global scene, it has become the world's principal lubricant, and in industry it is the largest source of energy. For instance, petroleum is used as fuel for all forms of transportation; it is an important source of energy for electricity generation and it is the basis from which such diverse products as plastics, fertilisers, detergents, explosives, cosmetics, pharmaceuticals, pesticides, etc, are made. Given its usefulness and essentiality in many areas, it is not surprising that the demand for petroleum has been soaring tremendously. World oil demand that was 21 billion barrels in 1973 rose to 45.6 billion in 1986 notwithstanding the oil glut that resulted from the world-wide economic recession and the concerted efforts at the substitution of alternative energy sources for oil.[38]

From the time of the first major discovery of petroleum in Titusville, Pennsylvania in 1857[39] to the present, the structure of the international petroleum industry has

38 This information is taken from Lukman, R., World Energy Market supply, OPEC Bulletin No.34 1987 p.24.

39 The first major oil discovery is recorded to have taken place in 1857 by Colonel E.L. Drake in Titusville Pennsylvania. For an elaborate account see Tugendhat, C.et al, Oil, the Biggest Business, Eyre & Methuen London 1975 chapter one.

undergone several changes. In this brief discussion on OPEC and the international oil scene, such changes will be highlighted from a historical perspective. For ease of presentation, the discussion will be conveniently divided into two phases in terms of shifts in power of control over the petroleum industry:

(i) The Pre-OPEC era, when the world oil market was totally controlled by multinational firms known as the "majors"; and

(ii) The Post-OPEC era, when many new competitors called "minors" arrived on scene in the oil market in addition to the "majors" producing an era of declining oil prices which led to the formation of OPEC; and the Organisation became stronger, relegating the MNOCs into the background in the oil market and the emergence of national oil companies in both oil producing and consuming countries.

2.3.2 THE PRE-OPEC ERA IN THE INTERNATIONAL PETROLEUM INDUSTRY.

The scramble for the control of the world's oil began in 1890 when Henri Deterding chartered a small Indonesian company to exploit the oil of the Dutch East Indies. This company was the seed for subsequent growth by amalgamation into the Royal Dutch/Shell.[40] By the turn of the century then, the company which is still among the top three in the world today had been joined by others, mainly American companies, in the oil exploitation business. Between 1918 and 1945, by dint of colonial control over the Middle East, the four major Middle Eastern oil producers, Saudi Arabia,

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40 See Sampson, A., The Seven Sisters (The great oil companies and the world they make.) Hodder & Stoughton. 1975 p.23.

Iran, Iraq and Kuwait were divided up among the companies. At that time there were seven leading firms dominating the industry usually referred to as the "majors" or "Seven Sisters".[41] Five of these are American-Standard Oil (New Jersey), Texaco, Gulf, Mobil and Standard Oil of California; then there is British Petroleum, which is British owned and Royal Dutch Shell, which is Anglo-Dutch. In addition to the traditional seven, there was a French company called CFP-(Compagnie Francaise des Petroles), often referred to as the "eighth major", which though less important in international terms at that time nevertheless owned a significant share in Middle East oil production.[42] These companies were all vertically integrated entities and by mid-fifties they were in control of over 90 per cent of production, refining and marketing facilities in the non communist world outside the United States. They owned two-thirds of the world's tanker fleet and every important pipeline at the time. They produced oil in the Middle East, Africa, Latin America and the Far East, and transported it through owned or controlled pipelines, tankers and refineries to markets throughout the world. Their vast size and financial resources enable them to enter into high-risk and capital-intensive ventures such as petroleum exploration and production. Their research activities also help to maintain their technological superiority over the host countries.

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41 These companies are also referred to as the "Big Seven". See Tanzer, M., The energy crisis: World struggle for power and wealth, Monthly Review Press, 1974.

42 A brief History of each of the international 'majors' can be found in Edith T.Penrose, The Large International Firm in Developing Countries: The International Petroleum Industry, Allen & Unwind, 1968 especially in chapter 4.

Furthermore, at that time too the price of oil was dictated by them under a basing point system centred on the U.S. Gulf irrespective of where the oil actually came from. One consequence of this price policy, from the point of view of many oil importing countries, was that they did not benefit from their proximity to oil producing areas, since for the purpose of price of oil it was only their distance from the U.S. Gulf which mattered. After World War II, the Persian Gulf was made the second basing point for the Eastern Hemisphere market. By mutual consent, the majors declared the same price centred on Persian Gulf for crudes of different variety; these were then taken as bases for price fixation in the oil market.[43]

Added to their economic power and technical expertise, the majors derived invaluable political backing of their home governments, notably the U.S. and Great Britain. Indeed, the entire oil mining agreements in the early years, called 'concessions', beginning from the Middle East through to Africa and Latin American oil producing countries, evolved under the regime of colonial rule which at the time wielded great influence in the areas of international relations. All these factors contributed and provided the majors with a high degree of horizontal integration (i.e. ownership of and access to widely diversified sources of crude oil supply) in addition to their vertical integration through ownership of both upstream (crude production) and downstream (refining, transport, and marketing) facilities.

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43 This discussion draws on Tanzer, op.cit., chapter 2 and Hossain, K.,Law and policy in Petroleum development. Frances Printer London 1979 chapter 1.

The dominance of the world oil market by the majors continued until after 1959, when they began to face challenges. The period from 1959 to 1960 marked a watershed in the international petroleum industry. The Middle Eastern countries soon after attainment of political independence began to mount challenges to the existing organisation of their oil resources. The old concession agreements concluded under colonial regime had originally given the oil firms (majors) proprietary rights to Middle Eastern oil for terms like sixty to seventy years not to mention the duration of extension of such agreements. The payment of taxation under the concession system was non-existent, instead the host countries were paid a fixed royalty per barrel. Factors such as this made the host countries to clamour for control over the organisation and development of their oil industry.

Another challenge faced by the majors was caused by the re-entry of Soviet oil exports into the world market in 1958, and on a large scale in 1959. After the Russian Revolution, Soviet oil exports stopped until 1959, when their oil began once again to be sold to non-Soviet markets; and these were sold at a price lower than prevailing world oil price at the time. Furthermore, the final challenge, and no less important too, was the emergence of new competitors from America and some state oil companies like the E.N.I. of Italy, whose search for cheap sources of oil abroad proved successful. The new comers are generally referred to as 'international minors' or 'independents'.[44] Unlike the

44 Among the oil firms known as the 'minors' were Phillips, Standard oil of Indiana, Occidental, Pan American, etc.

'majors', who possessed their own marketing outlets, the 'minors', because they had none were prepared to sell their crude at a much lower than the prevailing price to independent refineries in Western Europe and Japan. In addition, they were willing to assist the host countries with exploratory activities as contractors or in joint ventureship deals with these countries, terms which were unacceptable to the 'majors.'

All of these factors made the petroleum industry more competitive, particularly from the point of view of the oil importing countries, who were now presented with many alternative sources from which they could buy oil. The 'majors' were as a result forced to reduce oil prices in order to meet this competition. This, however, led to serious conflicts with oil producing countries, who had been since the early 1950s entitled to a '50/50' share of profits from oil, and the reduction in oil prices meant for them a lower return of oil revenue. Therefore, the reduction in oil revenues was unacceptable to the host countries' governments who responded with the formation of the OPEC.

2.3.3 THE POST-OPEC ERA.

As mentioned above, the formation of OPEC was as a result of a protest against the actions of the MNOCs (particularly the erstwhile 'seven majors') who hitherto alone determined the prices and level of oil produced. What can be described as the last straw occurred when in 1959, and again in 1960 the MNOCs unilaterally reduced the prices at which they sold Venezuelan and Middle East oil.[45] This frequent reductions

45 See Danielsen op.cit. p.113.

in oil prices without consultation with the oil producing countries led to five major oil producing countries comprising- Iran, Iraq, Kuwait, Saudi Arabia and Venezuela to meet in Baghdad on September 14, 1960 and founded OPEC to defend their interests.[46]

The *raison de'tre'* of the organisation as spelt out in the statute creating it are as follows:

> "(i) The coordination and unification of the petroleum policies of member countries and the determination of the best means for safeguarding their interests individually and collectively;
> (ii) devising ways and means of ensuring the stabilisation of prices in international oil markets with a view to eliminating harmful and unnecessary fluctuations and
> (iii) ensuring a steady income to the producing countries and also an efficient, economic and regular supply of petroleum to consuming nations and a fair return on their capital to those investing in the petroleum industry."[47]

The organisation now has a total membership of thirteen. Apart from the five founding members, the other full members are: Qatar (1961), Indonesia (1962), Libya (1962), Abu Dhabi (1967-which merged with the United Arab Emirates in 1974), Algeria (1969), Nigeria (1971), Ecuador (1973) and Gabon (1975).

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46 The Eight Conference (Extra ordinary) of OPEC held in Geneva in 1965, adopted the statute of the Organisation. OPEC Resolution VIII 56 (April 1965).

47 Taken from Article 2(A) (B) and (C) of OPEC Statute. Ibid.

Table 2.4

OIL RESERVES, POPULATION AND GNP PER CAPITA IN OPEC MEMBER COUNTRIES, 1990.

Country	Reserves (billion/brls)	Population (millions)	GNP per capita (U.S.$)
Saudi Arabia	260.04	16.5	56,380.2
I.R.Iran	92.86	55.3	4,306.1
Kuwait	97.00	3.0	8,318.7
Iraq	100.00	18.8	1,933.7
Venezuela	60.05	19.7	437.2
Qatar	4.50	.5	16,551.1
S.P.Libya A.J.	22,80	4.2	6,088.4
Indonesia	2.90	191.3	528.4
U.A.E	98.10	2.2	19,805.3
Algeria	9.20	25.6	1,637.4
Nigeria	17.10	88.5	201.2
Ecuador	1.43	10.4	944.9
Gabon	1.77	1.6	3,804.2

Sources: International Petroleum Encyclopedia, 1990, and OPEC Annual Statistical Bulletin 1991.

OPEC was the first institution created on the international level aimed at safeguarding and defending the common petroleum interests of underdeveloped producer countries. Since its creation, the Organisation, on the whole, has had two main goals- to raise the taxes and royalties earned by member states from crude oil and to assume control over production and exploration from the MNOCs.[48]

These objectives were achieved to some extent between 1970 and 1973. They were achieved fully in the aftermath of the Arab-Israeli war of that year.[49] And from that time on the structure and operation of the international petroleum industry began gradually to change. For instance, whereas OPEC's demand for higher prices failed in the sixties

48 The following discussion draws on Ajomo M.A. "An appraisal of the OPEC. Vol.13 Texas International Law Journal 1977 p.14.

49 The combined effects of the closure of the Suez canal in 1970 following the 1967 and 1970 -73 Middle East wars and the embargo placed on supplies of Arab oil to the U.S. for supporting Israel led to the increase in oil price which OPEC had been seeking.

because of their inability to control production, after the 1973 war it has been possible both to increase the price and to regulate production. Aside from the increase of crude oil prices from about $1.28 in 1970 to $11.65 per barrel after October 1973, state-owned oil companies were formed by member-countries which entered into many joint exploration agreements with the 'minors'.[50] Perhaps more remarkable development than these two was the increasing participation by governments in running their respective oil industries. In 1971, Algeria nationalised its oil industry, and by 1973, the Libyan government had 51 per cent ownership in her oil concessions. Nigeria took over 35 per cent of Shell-B.P. concessions, now increased to 60 per cent. Saudi Arabia, Qatar, Abu Dabi, Iraq and Kuwaiti governments took over 51 per cent of equity in oil companies operating in these countries. Indeed Seymour summed up the whole event in these words,

> "When the OPEC member governments took over full responsibility for the pricing of their crude oil exports in 1973-4, it marked the end of an era as far as the major international oil companies and the industrialised consuming countries were concerned. some of the implications of this momentous decision took a few more years to work themselves out. But basically, it was clear that the timespan of control by the major multinationals over the oil resources of the main exporting area was drawing to an end after nearly three quarters of a century."[51]

The situation as it is today contrasts sharply with that prevailing in the international petroleum industry three decades ago. Oil prices are no longer fixed by the old oil

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50 Seymour op.cit p.5.

51 Seymour I., OPEC Instrument of change op.cit. p.147.

cartel, the 'majors', this role having been taken over by the OPEC. The MNOCs no longer control oil production in oil producing countries and majority ownership has passed into the hands of the host governments. This will become evident in our discussion on the Nigerian oil policies below. Again, whereas the home countries of the MNOCs were so vigorous in the past in defending these companies' interests in the host countries, now these governments are often more concerned with maintaining good relations with, and flow of oil from, the oil producing countries.

Thus, the assumption of ownership and control of their oil industries' operations by the governments of oil producing countries broke a link in the integration that had characterised the operations of the MNOCs notably the 'majors'. Although this in itself does not affect the lucrative profits these companies have made, caused by higher oil prices; the MNOCs are said to have increased their profit by 50 to 70 per cent in recent years.[52] The oil producing countries do need the MNOCs in spite of this. Most of them are still greatly dependent on these firms in three key areas: (a) oil technology, (b) management skills, and (c) marketing. Their control over these areas will continue to give good profit figures and bargaining power for them for some years to come. The nationalisation of their interests in some countries has not jeopardised their access to crude oil; in such cases they resort to buying a bulk of the oil from oil producing countries in order to refine and resell for profit elsewhere. But where their interests have

52 See OPEC Annual statistical Bulletin 1991 at p.139.

not been fully nationalised, they continue to manage the industry until the locals through their National oil companies are capable to run their own oil industries independently of them. Nigeria is an example *par excellence* of the latter position as we will see in our discussion on activities of NNPC-her state-owned oil company in chapter three.

2.3.4 OPEC'S INFLUENCE ON NIGERIAN OIL POLICIES

2.3.5 BACKGROUND ACCOUNT ON THE NIGERIAN OIL INDUSTRY.

Nigeria was under British rule when the first discovery of oil in commercial quantity was made in 1957. The terms and agreements under which the oil was exploited were worked out between the Shell-BP and the British Government. Shell-BP was the principal company undertaking oil exploration and production operations in the country then, although there has been sporadic exploration by others prior to that date. Such monopolistic position held by Shell-BP in the past with respect to rights of oil exploitation accorded it a position of dominance in the history of oil development in Nigeria which it still enjoys to-date.[53]

At that time, because Nigeria was still a British colony, only British companies and those of other Western nations duly permitted by Britain were allowed to engage in oil operations in the country. After attaining independence in 1960, the Nigerian government became concerned over the long-term economic and political implications of Britain's

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53 According to the Nigerian Oil Directory 1990, the total Crude Oil production figure for that year was 13.6 million barrels per annum, and out of this, Shell alone accounted for 49.2 per cent, Gulf contributed 15.9 per cent, Mobil's was 12.3 per cent and the others contributed the rest.

major influence over oil operations in the country. Because of the advantages that could be derived by opening up business links with other countries of the world, the policy of multilateral economic relations with the rest of the world was adopted. One Nigerian writer also described it simply as an 'open door policy'.[54] That marked the end of Shell-BP's hitherto virtual monopoly. In 1961, the Nigerian government granted Mobil Exploration Nigeria Ltd, a subsidiary of the American Socony-Mobil oil company (one of the "majors"), licence to join in the exploration search. Thereafter, other MNOCs (both "majors" and "minors" included) joined in the search, viz. SAFRAP, a French oil group, AGIP, a subsidiary of Italian state oil company, Phillips, a Subsidiary of American Phillips oil company, Tenneco, a subsidiary of Tenneco Incorporated of America, Japanese petroleum company, Occidental, a subsidiary of Occidental of America, Ashland, subsidiary of Ashland of America and a host of others. See Appendix C which shows the oil companies and their activities in Nigeria.

The operational activities of these companies were governed by government licences and legislation which prescribed areas of operation for each of them. The principal legislation under which these companies operated at the time was the Mineral Oils Act 1914 and their profits were taxed in accordance with the Petroleum Profits Tax Act 1959. Because Nigeria lacked the technology, managerial expertise

54 Sasegbon, M.F.,"Current development in oil and gas law in Nigeria with comparative analysis with other African oil producing countries." Energy Law, vol.1 1981 p.365

and initial capital needed to exploit its petroleum resources, she had to grant initially favourable concessions to these companies to assist in that regard. A detailed analysis on the nature of the early concession agreements Nigeria had with these companies is contained in chapter Four of this study.

With the earlier surge in the number of MNOCs in Nigeria coupled perhaps with the bargaining experience gained by Nigeria from the conditions that existed between her affiliates of the multinationals in the Middle East and their host Arab oil producing countries, some changes to the petroleum operations regime at the time became necessary. It was clear to Nigeria that the liberal nature of the Mineral oils Act 1914, which was passed when Nigeria was under colonial rule, could not sustain much longer the modern pressure and trends then in the industry. Hence, in 1969, the first major attempt at enacting a detailed and comprehensive statute for the grant of rights to petroleum development in Nigeria was made with the promulgation of the Petroleum Act 1969.[55] The 1969 Act introduced many major changes compared to the 1914 Act especially in such matters as duration, rent and royalties, employment terms, training and transfer of technology, etc.[56] These changes in the legislation were necessary due to the fact that by 1969, there were as many as fourteen MNOCs from six different

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55 Petroleum Act No.51 (Petroleum Drilling and Production Regulations) 1969. Laws of the Federation of Nigeria. Lagos 1969.

56 Similarly, the Petroleum Profits Tax Act 1959 was amended in 1967, 1977 and in 1979. This is a legislation which imposes tax upon profits from petroleum operations in Nigeria.

countries engaged in petroleum development activities in Nigeria, either in partnerships or on their own; and besides at that time Nigeria had began to feel the impact of oil proceeds on her economy and therefore wanted more control and regulation of the operations of the industry.

2.3.6 GOVERNMENT ROLE IN THE PETROLEUM INDUSTRY.

Even after independence, the Nigerian government did not embark on or concern itself with making oil policies for the country until 1967.[57] Attention of government at the time was on the agricultural sector, which as seen in the preceding chapter, was hitherto the mainstay of the nation's economy. The advent of oil with the surge in oil revenue for the country led to the relegation of agriculture to the background. Attention began to be focussed on oil with the establishment of a Petroleum Division under the Ministry of Mines and Power in 1967. The late sixties witnessed substantial discovery of oil in the Middle East, Latin America and consequently, a number of MNOCs (the 'minors') having their own equity crude were looking for avenues to dispose of their surplus oil in the market.[58] This situation led to intense competition and the MNOCs resorted to incessant cuts in oil prices without consulting the oil producing countries whose revenue derive from such prices. As a result, the Nigerian government, through the Ministry of Mines and Power began to review financial agreements with

57 For a fuller discourse on the role of the technocrats and oil administrators in the Ministry of Mines and Power in moving the government into policy-making for the oil industry, See Turner, T., "The transfer of oil technology and the Nigerian state" 7 Development and change 1976 pp. 365-375.

58 For a more extended discussion on this see Tanzer, M., The political economy of international oil and the underdeveloped countries. Beacon Press 1969 pp.29-79.

the MNOCs.[59] Influenced by the attention OPEC was devoting to the problem of increasing oil revenues for its member countries, the Ministry spearheaded the government into policy making for the oil industry.[60]

The situation at the time, as we saw earlier, was such that the OPEC countries had no influence whatsoever on the conduct of operations or in the determination of the prices paid for the oil. By the same token, government revenue was determined more or less unilaterally by the MNOCs; any attempt by any producing country to interfere as Nigeria did was considered an affront and was dismissed.[61] In the absence of a unified resistance by the oil producing countries, the MNOCs were under no constraint in determining the level of production and oil prices. Such action was perceived as undermining the sovereignty of these countries. Hence, the formation of OPEC and the increasing dependence of the world on OPEC oil gave the members an avenue by which they could unify and coordinate their oil policies with a view to exerting control on the exploitation of their resources.

An important milestone in the history of the Nigerian petroleum industry took place in July 1971 when Nigeria formally became the eleventh member of the OPEC. Nigeria joined OPEC at a time when memberstates were consolidating oil policies in their respective states with a view to

59 This was when the terms under the traditional concession regime were reviewed and replaced by the Oil Mining Lease (OML) and Oil Prospecting Licence (OPL) agreements 1969. It was the same time too that the Petroleum Profits Tax (PPT) Act 1959 was repealed and replaced by the 1967 PPT Act.

60 See Turner op.cit. p.366.

61 See Nwankwo, A.A., After oil, what next? Oil Multinationals in Nigeria. Fourth Dimension, Enugu 1982 p.32

exercising greater control in the exploitation of their petroleum resources. Prior to her membership of OPEC, Nigeria had participated in the organisation's deliberations in 1968 as an observer.[62] Since becoming a member, Nigeria has structured her oil legislation, fiscal policies and even petroleum development contracts in tune with the trends in OPEC. Perhaps why it took Nigeria more than a decade after attaining independence to join the OPEC might be due to the influence of the British Government's policies on Nigeria then, which so long as Nigeria still adopted those policies, such membership would not have come about.

The first effort of Nigerian government in playing a regulatory role over oil operations started in 1971, following the example of OPEC memberstates, with the creation of a state oil company - the Nigerian National Oil Corporation (NNOC). But it was not until 1975 that the Petroleum Division under the Ministry of Mines and Power was accorded the status of a full-fledged Ministry - the Ministry of Petroleum Resources. By 1977, the Ministry was merged with the NNOC to form the Nigerian National Petroleum Corporation (NNPC), the activities of which today, cover all facets of the integrated oil industry. The NNPC serves as the main agency through which government strives to achieve its policy objectives, and it also engages on behalf of the government in negotiations and signing of all petroleum development contracts with the MNOCs.[63]

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62 See Understanding the Nigerian oil industry: NNPC Publication. Public Affairs Department, Lagos 1986 p.53.

63 For a detailed analysis on the activities of NNPC see Chapter Three infra.

Even though signs of Nigeria's participation in the operations of the oil industry first appeared in 1962, when the government was given an option to participate in AGIP's operations should the latter's exploration efforts prove successful, this option was not exercised until 1971.[64] Under the old concession regime, the idea of state participation hardly ever existed. At that time, the MNOCs not only prevented Nigeria and indeed other host countries from obtaining a meaningful share in the equity ownership but also denied them effective participation in the management and control of the various operations of the industry. The reason behind AGIP's offer for participation at the time might not be unconnected with its position as one of the "minors" in competition with the erstwhile "Seven Majors" for exploration opportunities in Nigeria. However, whatever the reason, it was a landmark.

The aims of Nigeria for seeking participation is discussed at length in Chapter four. Hence, there is no need for a repeat here. Suffice it to state here that, generally, Nigeria, like other oil producing countries seems to look at state participation as a political as well as an economic necessity. In brief, it can be stressed that the *desiderata* of the government have centred on control and financial returns accruing to it through participation. This is premised on the argument that the government could receive, in addition to tax and royalties, dividends proportionate to its interest in the venture.

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64 See the discussion on participation agreements generally in Chapter four of this study.

The first participation arrangement effected by Nigeria was with SAFRAP (now ELF) in 1971. Government acquired 35 per cent participation interest in ELF's operations as a precondition for allowing the company to resume operations in Nigeria after the civil war.[65] In October of the same year its option to acquire 33 1/3 per cent interest in AGIP's operations was implemented. The decision in 1971 to take active part in the oil industry was prompted by two OPEC Resolutions; the first Resolution was passed in June 1968 which embodied a policy statement calling for renegotiation of concession arrangements between memberstates and MNOCs, and the second Resolution in 1971 re-emphasised that members should take steps to acquire 20 per cent participation interest by 1981.[66] The first OPEC Resolution which urged participation by government state oil companies in the oil production operations in old concessions clearly stated as follows:

> "Where provision for Government participation in the ownership of the concessions-holding company under any of the present petroleum contracts has not been made, the Government may acquire a reasonable participation (not equity shares) on the grounds of the principle of changing circumstances".[67]

In keeping with OPEC Resolution on participation, government increased its participation interests from 51 to 55 and then

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65 During the 30 months Nigerian civil war (1967-70) ELF was found to be in support of the Biafran side against the Federal side. That was a sort of penalty to the company for such action.

66 OPEC Resolution VXVI, 90 (June 1968) and OPEC Resolution XXIV 135 (July 1971) respectively. Most importantly, the June 1968 Resolution emphasised, inter alia, that member governments should endeavour to explore for and develop their hydrocarbon resources directly, acquire reasonable participation in the ownership of the oil companies and base the assessment of the companies' income taxes and any payments to the government on a posted or tax reference price for those hydrocarbons produced under contract.

67 OPEC, Resolution xvi. 90 of June 25, 1968; OPEC Resolutions, Vol.2, p.12.

to 60 per cent in 1972, 1974 and 1979 respectively. As a result, today, in all the ten joint venture agreements operating in the country, government via the agency of NNPC has 60 per cent interest.[68] Nowadays, the trend in petroleum development agreements is towards Production Sharing and Risk Service contracts as that negotiated between NNPC and ASHLAND in 1973 and with AGIP in 1979 respectively. These contracts, as we will see in chapter five where they are treated in detail, originated and had earlier been in application in some OPEC countries. In effect, Nigeria got the idea of such contracts from those OPEC member countries. Notable among these countries is Indonesia where the production sharing contract is said to have originated. The most recent joint venture agreement in the Nigerian petroleum industry, however, is that between NNPC on the one hand, and SHELL, AGIP and GULF on the other, which was signed in 1988 for the development of gas liquefaction plant for Nigeria.[69] All these participation policy measures are geared towards effecting Nigeria's active participation in the oil industry and ensuring that the government derives maximum benefits from its petroleum resources. As a result, the policy of making participation agreements is formally embodied in the Petroleum Decree 1969 (As amended) in 1979. Under Section 1 paragraph 34(a) of the Decree, the Minister for Petroleum Resources, may whenever he considers it to be in the public interest impose on a licensee or lessee

68 This is graphically illustrated in Appendix C on activities of the Oil Companies in Nigeria.

69 This discussion is further broadened supra under the section on Recent Developments.

special terms and conditions not inconsistent with the Decree as to participation by the Federal government in the venture.

2.3.7 NGERIA'S OIL POLICIES AFTER OPEC MEMBERSHIP

Generally, there are three important aspects of the Nigerian petroleum industry which form the basis to official action on policy matters. First and foremost, the entire ownership of all Mineral oils and gas in, under or upon any lands in Nigeria vest in the state.[70] Mineral oils and natural gas under the territorial waters of Nigeria or found in, under or upon any land which forms part of the continental shelf are also owned by the state. The Constitution of the Federal Republic of Nigeria 1979 (as amended in 1986) further emphasised the state ownership in section 40 (3) which provides that

> "[t]he entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the government of the Federation and shall be managed in such manner as may be established by law."[71]

As a result, any organisation or group of persons who wishes to undertake any activity for the exploration for or production of mineral oils or natural gas requires a formal authorisation by the state.[72] As has generally been the practice with most former British colonies, Nigeria inherited this policy from Britain. As in Britain, the

70 Petroleum Act 1969 Section 1.

71 See Section 40(3) The Constitution of the Federal Republic of Nigeria 1979 as amended in 1988.

72 For a thorough and incisive analysis on the legal aspects of ownership of petroleum resources in Nigeria, see Momodu, K.M., "Legal Aspects of Ownership of Natural gas in Nigeria" 6 JENRL No.4 1988.

essence of the policy lay in the vesting of all petroleum interest in the Crown.[73] This was part of the general colonial mining policy at the time.[74] Secondly, owing to the dearth of managerial expertise and technological know-how, the country's petroleum resources are at present largely developed and controlled by the MNOCs.[75] The same can be said of most other oil producing developing countries- Libya, the United Arab Emirates, Kuwait, Iran, Saudi Arabia and the Caribbean.

The net effect of this is that in Nigeria, as in those other countries mentioned, the government plays a dual role. In the first place, it formulates policies and lays down rules which regulate the operations of the oil industry. Similarly, being the sole supplier of mining or exploration licences, the government is invariably a party to all petroleum development contracts through the NNPC- the national oil company. The position in Nigeria which is same as in the U.K. and also in most oil producing developing countries thus differs from that in the US where mining agreements are generally entered into between prospectors

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73 This is set out in Petroleum (Production) Act, 1934, 24 and 25 Geo. 5 C. Section 61. a U.K.Government Legislation.

74 See Colonial Office, Memorandum on Colonial Mining Policy, Colonial No. 206, H.M.S.O., 1964, p.4. One of the reasons profered by the Colonial Government in support of this policy is that "Minerals are important economic assets to a territory and being the gift of nature, their benefits should be shared by the community generally, to whom they belong and not to be enjoyed merely by limited groups of private individuals who are not members of the community concerned". Taken from the Memorandum on Colonial Mining Policy.

75 The discussion here is extremely terse. For a detailed and balanced treatment see Chapter Seven infra.

and landowners, and where ownership in oil is vested not in the state or the Crown but in the discoverer.[76]

The third important aspect of the Nigerian petroleum industry is that owing to lack of a big internal market, in contrast to the U.S.A., only a very small proportion of its oil is consumed locally, the rest is sold in world markets in competition with oil from other countries. This has important implications because the demand for oil from any one producing country is highly elastic to changes in the terms on which oil in another producing country is produced and made available to consumers.[77] For instance, if the cost of any one country's oil is significantly higher than the cost of oil in other sources then, customers will shift to the cheaper sources. Nigerian oil, as we noted above is largely produced by the same group of integrated MNOCs who produce oil in other host countries and buy back the bulk of it themselves. From the point of view of these MNOCs, the relevant considerations when making decisions about the geographic pattern of their commitments, are not only the comparative costs of producing oil in various areas and bringing it to the consumers, but also the comparative terms of their mining agreements especially the fiscal obligations which will ultimately affect their net integrated returns.[78]

Fourthly, Nigeria exhibits a classic example of an oil-dominated economy. Hence, the need to maximise returns from

76 See Blinn, K.W. et al, International petroleum exploration and exploitation agreements. Euromoney Publications 1986 p.25

77 This scenario occurs most between OPEC and non-OPEC nations, for a more lucid account on this see Seymour,I, "OPEC and Structural changes" in Hawdon, D., The changing structure of the world oil industry, Croom Helm London. 1985 p.71.

oil has been the top-most feature of the country's oil policy. As the largest single contributor to the country,s Gross Domestic Product (GDP), oil has enabled the country to pursue ambitious development programmes in the past as well as the present. In 1990, for instance, it contributed over 96 per cent of the country's total export and over 90 per cent government revenue.[79] Thus, from 1957 to the present, the policy posture of Nigeria has shifted from the initial position of a collector of royalties and regulator of MNOCs operations to that of a participant in the exploration for and production and marketing of oil. In addition, through her membership of OPEC, Nigeria, collectively with other member countries are able to influence the price of oil in the world market. Nigeria's membership with OPEC and formation of NNPC., all in the same year (1971), largely contributed in bringing about this shift.

The Nigerian government's efforts to maximise its returns from oil can be seen in the light of the country's participation, production, marketing and pricing policies which are discussed below. It is in this context that our discussions on the impact of OPEC on Nigerian oil policies are to be understood.

2.3.8 PRODUCTION POLICY

Since more than 90 per cent of Nigerian crude oil is exported, the issue of determining the level of production of such oil acquires special importance. This is because the

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78 See Nwankwo op.cit. p.37.

79 Taken from Financial Times, London (hereafter FT) March, 12 1991

level of production takes into account the demand for oil at domestic level and in the world at large as well as the financial return that accrues to the country. Especially so if one considers that the objective for development of petroleum resources in Nigeria as stated in the country's Second National Development Plan is, "to earn foreign exchange through its local processing to reduce import bills and to provide funds for financing expanding investments in the economy as a whole."[80] In pursuance of this objective, NNPC on behalf of government, initially encouraged a large scale production and export of oil to earn more foreign exchange. Production figures, in daily average and yearly totals from 1958 to 1990 are reflected in Table 2.2 below.

80 See The Second National Development Plan document. Plan 1970-74 (Lagos, Federal Ministry of Information 1970. p.143.

TABLE 2.2

NIGERIA: CRUDE OIL PRODUCTION-1958- 90(THOUSAND BARRELS)

YEAR	DAILY AVERAGE	ANNUAL TOTAL
1958	5.1	1,876
1959	11.2	5,950
1960	17.4	12,318
1961	46.0	29,108
1962	67.5	53,745
1963	76.5	81,668
1964	120.2	125,661
1965	274.2	225,744
1966	417.6	378,168
1967	319.1	494,640
1968	141.3	546,355
1969	540.3	743,565
1970	1,083.1	1,138,896
1971	1,531.2	1,697,784
1972	1,815.7	2,362,331
1973	2,054.3	3,112,150
1974	2,255.0	3,935,225
1975	1,783.2	4,586,093
1976	2,066.8	5,342,537
1977	2,085.1	6,103,598
1978	1,897.0	6,796,000
1979	2,302.0	7,636,228
1980	2,058.0	8,389,456
1981	1,439.6	8,914,910
1982	1,287.0	9,384,665
1983	1,235.5	9,835,622
1984	1,388.0	10,343,630
1985	1,498.9	10,890,729
1986	1,466.6	11,426,038
1987	1,323.0	11,908,933
1988	1,367.6	12,409,461
1989	1,716.3	13,035,910
1990	1,726.7	13,666,156

Source; Petroleum Inspectorate, NNPC, Falomo Office, Lagos and OPEC Annual Statistical Bulletin 1991.

Since the first export of oil began in 1958, production had increased steadily. Production commenced that year at a modest rate of 5,100 barrels per day. That figure doubled the following year and as shown in Table 2.2, it reached its daily peak of 2.5 mb/d of production in April 1974. There has been a decline in production since 1982. Although the optimum production capacity of the country currently stands at 2.2 mb/d, the current production rate as dictated by OPEC is about 1.6 mb/d.[81] The drop in production after 1979 is explainable by the impact on the importers of the rise in oil prices in 1973/74,[82] and by the growing conservation tendencies among the exporters. The price increase had the double effect of inhibiting consumption and simultaneously making the increase in production at pre 1970s' rates unnecessary because of the increased return per barrel of exports, and the rise in total revenues collected by Nigeria and other OPEC member countries.

In effect, the conclusion to be deduced from the foregoing is that in the decades preceding the 1970s, the production policy of Nigerian government seems to have been to produce and sell as much oil as possible in order to earn a considerable amount of revenue with no concern for depletion or conservation. But a departure from this policy occurred from the 1970s, with some concern for conservation, thus, leading to a reduction in the level of production. Perhaps the production policy of the post 1970s was easy to adopt in as much as the price increases permitted Nigeria and other exporting countries to make substantially increased revenues without a proportional increase in production. However, it was not price developments alone which led to the decrease in the level of production by Nigeria. In addition to price developments, there was the growing awareness among

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81 Taken from the FT, London March 12, 1991.

82 The rise in oil prices was caused by the aftermath of the embargo placed on oil exports by the Gulf states to the US and The Netherlands for their support of Israel during the Arab/Israeli war of 1973. This action led to panic in the oil market that resulted in a dramatic increase in the price of oil from $2.30 to $11.00 per barrel. For details on this see Danielsen,A.L, The Evolution of OPEC. Harcourt Brace Publishers 1982

exporting countries in the 1970s which began to dominate thinking about reserves and production in relation to the finiteness or exhaustion of oil resources. Hence, the need arose to extend the life-span of oil reserves in order to enable social and economic development in oil exporting countries to catch up with or match with the extensive depletion of their reserves.

It is also pertinent to note that even before the 1970s, there were stirrings among OPEC members for some control over production, with a view to increasing prices and avoiding competition for control of the export markets, as it were, by the MNOCS. The overriding objective of this control,(then called 'prorationing') was to ensure a fair sharing among OPEC members of the fast growing oil market at the time.[83] The subject of prorationing was first introduced within OPEC in 1961, but nothing was done beyond preliminary discussion. The reason according to Seymour was the reluctance among most members to allow the subject of regulation of or control over production to pass from individual governments to a collective authority.[84]

Collective policy formulation by OPEC on the matter however was made only in 1968, when the "Declaratory statement of petroleum policy" in member countries was passed.[85] This statement concerned itself with the exercise of permanent sovereignty over hydrocarbon resources by OPEC governments through a number of policy orientations. The section

83 This was brought about by the impact of OPEC Resolution IX 61 (July 1965) on memberstates.

84 Seymour, I, OPEC: Instrument of change. Macmillan London 1980 p.82.

85 OPEC Resolution VXI 90 (June 1968)

addressing the issue of conservation practices required the MNOCs to observe and pursue the principle of conservation in order to safeguard the host country's long term interests, and enable the government to lay down the necessary rules and procedures on the matter. Thus, this means that it took the whole of 1960s and the more than tripling of production, before concern over depletion and the need for conservation began to be felt strongly enough to lead to protective action within OPEC. As such, conservation measures became a compelling objective of all OPEC member countries from the 1970s and beyond through setting a production ceiling on their output. Nigeria for example, has had a production ceiling (quota) of 1.61 mb/d since 1974; Saudi Arabia has its ceiling at 8.5mb/d while Kuwait's is 2 mb/d to mention a few.[86] Nevertheless, these production limits have been, and could be relaxed as goodwill gestures. Such goodwill was shown at the beginning of 1991, when a 7.7 per cent increase of OPEC's output came to off-set some of the shortfall caused by the Gulf crisis following the Iraqi invasion of Kuwait which had induced a temporary uncertainty in the market.[87] Nigeria's average daily production at the time was 1.83 mb/d as against the OPEC quota of 1.61 mb/d.[88]

The proven oil reserves of Nigeria, both onshore and off-shore which was 300 million barrels in 1961 increased systematically to 18 billion barrels at the beginning of 1980. The net remaining established reserves in 1984 stood at nearly 13 billion barrels. There has been a decline in

86 The following discussion draws heavily on Danielsen op. cit. pp 117-119.

87 Taken from FT London March 12, 1991.

88 Ibid.

the country's reserves from 1980 except for a substantial discovery in 1983. (See Table 2.3 which depicts the oil reserve situation in Nigeria) However, 1990 was the most successful of the last decade, in terms of addition to the country's petroleum reserves. Over 2.5 billion barrels of oil equivalent was added to the natural reserve that year through new discoveries and conservation measures, making the total reserves to stand at 17 billion barrels.[89]

Table 2.3

NIGERIAN PROVEN CRUDE OIL RESERVES (1970-1990) (MILLION BARRELS)

YEAR	REMAINING PROVEN OIL RESERVES
1970	6,940.9
1971	8,308.6
1972	7,680.6
1973	6,359.7
1974	6,004.6
1975	6,271.6
1976	6,113.8
1977	5,349.8
1978	8,679.0
1979	10,575.6
1980	9,022.9
1981	12,468.2
1982	12,467.9
1983	13,333.2
1984	12,958.5
1986	16,000.0
1987	15,980.0
1988	16,000.0
1989	16,000.0
1990	17,100.0

Source: Direct communications to NNPC during field research and OPEC Annual Statistical Bulletin 1991.

An estimate by Adams, a former NNPC Managing Director, indicates that if Nigeria continues constantly to produce at OPEC ceiling of 1.6 mb/d the country's reserves will last

89 The following discussion is largely based on the address of Minister of Petroleum Resources Professor J. Aminu on Activities of the Nigerian oil industry , See West Africa Magazine May 5, 1991.

for at least the next 25 years.[90] Of course it is not technically feasible to produce at constant rates throughout the life-span of a reserve. It is also possible that more reserves would be found as it happened in 1990. Thus, in the next 25 years, unless more reserves are found, Nigeria would still be producing oil but almost certainly at a declining rate. Hence the need arises for diversification of the country's economy instead of total reliance being placed on a single depletable resource-oil.

2.3.9 MARKETING POLICY

Active participation by the Nigerian government through NNPC in the marketing of crude oil only started in 1973. Prior to this time, oil was marketed by the MNOCs through their integrated system using transfer pricing methods. Following the acquisition of participation interests in the major oil marketing companies i.e. SHELL/B.P., GULF and MOBIL,[91] a substantial amount of equity oil became available for direct marketing by the government. Initially, special arrangements were made between NNPC and the same oil companies to buy government equity oil. Since crude oil is not used directly but in the form of refined products, it could only be sold to owners of refineries at the time, that is, to the oil companies themselves, their partners or their subsidiaries. Thus under such arrangement, the MNOCs purchased substantial quantity of government equity oil under a 'buy-back' system.[92] The remaining government equity oil known as the

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90 Interview information with Mr G.A.Adams in Lagos November 1989.

91 This became effective from April 1,1973.

92 The buy-back system was adopted in Nigeria from 1973 to 1975 when it was discontinued. This was necessary because initially Nigeria had no facilities and outlets

'Retained' oil was marketed directly by NNPC. The first third party buyers of Nigerian oil were TENNECO Oil Company (March 1973) and GELSENBERGY MINERAOTOIL (GMBS) of Germany (April 1973).[93]

From the 1980s, however, the government decided to diversify the direction of its crude oil exports. By this time, government's participation policy had extended into all operations of the oil industry. For instance, in the marketing sector, out of seven marketing companies operating in the country, B.P. was taken over in 1979[94] and ESSO chose to give up its entire marketing interests to the government, while 60 per cent of the remaining five belongs to the government.

As a matter of policy, currently NNPC deals directly with the ultimate buyers of Nigerian crude oil. Any potential buyer only needs to apply to NNPC indicating its intention to purchase Nigerian crude oil. So far, only the NNPC as well as the MNOCS in Nigeria (in respect of their equity oil) have the legal right to export oil from the country. No other Nigerian companies or individuals can legally export Nigerian crude other than these two.[95] This change came about due to several factors. First, there was the factor of construction of many new refineries in both the exporting

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for marketing its equity crude whereas under the buy-back arrangement the MNOCs were given the option to buy such equity crude.

93 Interview Information with D.A. Makama, NNPC official. Lagos September 1989.

94 The taking over (i.e.,nationalisation) of BP assets in Nigeria at the time was a political move against the Britain's policy of supplying oil to South Africa. However, following the recent changes in South Africa, BP has been allowed to resume operations again in Nigeria.

95 For further details on this point see Understanding the Nigerian Oil Industry op.cit. pp.24-27. Also see Olisa M.M., Nigerian Petroleum Law and Practice. Fountain Publishers, Ibadan 1979 pp.214-219.

and importing countries of the world with the resultant opening of new marketing outlets other than those owned by the MNOCs. Secondly, the emergence of smaller, independent oil companies (the 'minors') that led to many free outlets to be available; and thirdly, the emergence of national oil companies in exporting countries for whom the outlook brightened as the widened outlets made opportunities available for them.

As a result, currently the bulk of Nigerian oil is sold to the US and West European markets. For instance in 1980, 54 per cent of Nigeria's crudes as against 34 per cent in 1979 went to Western Europe while 33 per cent instead of 49 per cent went to the US. In 1980, Nigeria exported 3.9 per cent of its crudes to Japan and her export to other African countries rose from 2.7 per cent to 3 per cent. Western Europe is still the largest importer of Nigeria's crude oil. In 1988, 75 per cent of Nigeria's crudes export went to Western Europe. In 1990, the share of Nigerian crude oil export to Africa stood at 6 per cent and those to Latin America and the Caribbean stood at 8 per cent whereas export to the US dropped drastically to 11 per cent.[96] The drop in exports is attributable to the increased availability of cheaper crude oil from Mexico and Alaska close to the US market. Also, the North Sea oil which is of comparable quality to Nigerian oil is said to have effectively competed to replace Nigerian oil in the US market.[97]

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96 Interview Information with an official of SHELL Oil Company Lagos. September 1989.

97 These markets comprise the Non-OPEC exporting countries.

2.3.10 OIL PRICING POLICY

Oil pricing occupies a central position among oil policies of exporting countries. It is the determinant of the volume of revenue earned from exports, which in turn has weighty implications for a wide range of issues, chiefly that of development and industrialisation. On the other hand, the determination of oil prices and the tax intake by exporting countries has been the issue over which the governments of exporting countries and importing countries (and MNOCs) have had their protracted, bitter and inconclusive battles over several decades. But through the turn of events in 1973, OPEC memberstates took over the decision to determine prices, and brought the seemingly interminable battle to an end.

It will be recalled that in the decades preceding the 1970s, prices of oil used to be determined by the erstwhile oil "majors" without consultation with the exporting countries. The latter's return under such arrangement was very minuscule- according to Al-Imadi, "this did not exceed $1.17 per barrel in the early phases of exploitation."[98] For instance, the price of oil per barrel had been at $1.75 in 1951, rose to $1.93 in 1953, rose again to $2.08 in 1957, then dropped to $1.93 in 1959 and to $1.80 in 1960 to stay unchanged at that level until 1971 when it rose to $2.18.[99] The rise in oil price in 1971 was associated with the

98 Al-Imadi, M., "Oil and Arab Development" OAPEC Papers on Arab Oil Industry. Kuwait 1981 at p.289 in Sayigh, Y.A., Arab Oil Policies in the 1970s, Croom Helm 1983, p.127.

99 Taken from Seymour, OPEC op.cit. at p.285.

overthrow of King Idris of Libya and the assumption of control by colonel Qadhafi in 1971. The new regime demanded both higher prices and a 58 per cent share of company profits which eventually led to the 25 per cent increase. The second and more dramatic price increases occurred in association with the Arab-Israeli conflict which began October 6, 1973 and the consequent Gulf members of OPEC's (Arabs) oil embargo to some Western countries for six months. The result was the quadrupling of prices to a level of $11- $12 per barrel.[100] This was significant because it firmly established OPEC's position in regard to its ability to set prices.

Similarly in Nigeria, prior to 1973, the MNOCs operating in the country produced and marketed all the crude oil at prices fixed by them alone. By 1973, however, the position changed, apparently in line with OPEC demands. In March of that year, a more systematic method of fixing prices for all the crudes from OPEC member countries was evolved. It was called the "posted prices system."[101] When posted prices were first introduced, they approximated "market prices" i.e. the price at which oil could actually be sold taking into consideration all factors of economics of sale.

Most of Nigeria's crudes are light and of low sulphur content which have very high yield of gasoline. Because of these characteristics Nigeria's crudes are rated as being of

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100 Taken from Danielsen op.cit. at p.175.

101 "Posted Prices" means the price fixed for crude oil by individual exporting countries for the purposes of computing the revenue derivable from the oil. Such prices are fixed according to the quality or grade of the crude in question.

high quality.[102] Nigeria's major crudes and their characteristics are shown in Table 2.4 below.

Table 2.4

CRUDE TYPE	SPECIFIC GRAVITY	SULPHUR
BONNY LIGHT	0.8398 - 37^0 API	0.14
QUA IBOE	0.8398 - 37^0 API	0.14
ESCRAVOS	0.8448 - 36^0 API	0.14
BRASS RIVER	0.8063 - 44^0 API	0.07
BONNY MEDIUM	0.8984 - 26^0 API	0.28
FORCADOS	0.8708 - 31^0 API	0.2

Source: Understanding the Nigerian oil industry NNPC Publication, Public Affairs Department, Lagos.1986 at p.26.

In 1974, two posted prices were fixed for Nigeria's Bonny light and Bonny medium crude oil through the OPEC.[103] The pricing formula consisted of fixing a price for each crude to reflect the quality of the crude due to its chemical characteristics and its export location vis-a-vis the reference crude. Saudi Arabia determines the price level by specifying the price of its most high quality crude, 'Saudi Light' with 34^0 API gravity. This is known as the 'marker crude' or 'reference crude', that is, the crude which forms the basis for the pricing of OPEC oil. The difference between the price of a given crude and the price of the marker crude is called the "differential". The consumer's decision to purchase one crude rather than another depends

102 See Understanding the Nigerian Oil Industry, op.cit. p.24. And also Danielsen op.cit. p.166.

103 The prices were $5.12 per barrel and $5 per barrel respectively.

on relative prices of the crudes available. Crudes yielding large quantities of highly valued products, such as gasoline command a higher price than other crudes. The same can be said of crudes which have a low sulphur content.[104]

The price of the marker crude was often determined at the level of OPEC conferences to reflect currency fluctuation and the level of inflation in individual countries. However, in January 1976, OPEC discarded the system of fixing posted prices to remove the stalemate in the oil market caused by the multi-tier pricing system under the posted prices method. In its stead, the 'official selling price'(OSP) system was introduced. This refers to the price at which governments sell their crude to customers dictated by the prevailing market conditions (of supply and demand) and galloping world inflation.[105]

As a consequence, a single selling price was also set for each grade of Nigerian crude. All third party buyers [106] of Nigerian crude, irrespective of their countries of origin and domestic market conditions now have to pay the same price for a given grade of crude. In other words, all third party buyers are subject to the same standard crude oil sales contract.[107]

Prices of Nigerian crudes as that of other OPEC member

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104 I owe this knowledge to Danielsen op.cit. chapter Seven.

105 Ibid.

106 Third party buyer here refers to crude oil sales contracts where the buyer is a foreign company or any organisation that does not carry out petroleum operations in Nigeria.

107 It is noteworthy that the NNPC has a printed standard form crude oil sales contract which consists of two parts. Part I of the contract covers matters such as duration of contract, quantity and quality of the grade of oil, price and currency of payment. Part II deals with general conditions of sale of Nigerian crudes.

countries have always been designated in the US dollars. But since 1978, in an attempt to diversify the country's foreign exchange holdings, the Central Bank of Nigeria (CBN) also accepts payments made in pounds sterling, Deutch marks, French Francs as well as Japanese Yen. Payment for crude oil liftings are by letters of credits in respect of those countries which have no significant assets in Nigeria.

2.3.11 POLICY OF 'ENSURING SELF-RELIANCE IN THE INDUSTRY.

Policy aimed at Nigeria becoming self-reliant in the running of the oil industry will occupy the discussion in this section. And that is, Nigeria's technology policy and the attendant "Indigenisation" of the industry. The aim of "indigenisation" in the present context involves much more than the control by Nigerians of equity and the heavy participation of Nigerian manpower in the labour force of the industry; it also involves the effective acquisition of technological capability by the Nigerian component of this force at all levels of skill and responsibility. It is necessary to point out at the outset that we shall not go into detail discussion of this because it is treated sufficiently in Chapter Six. Only the basic points will be looked at.

We noted earlier that inspite of more than three decades of petroleum activities in Nigeria, there is still a heavy reliance by the nation on foreign oil technology- technical and managerial skills and equipment. The government is bent on improving on the rate of acquisition or absorption of oil technology especially as petroleum has remained the mainstay of the country's economy. By way of illustration, six ways in which government's policy on manpower development and transfer of technology vis-a-vis the oil industry was vigorously pursued can be briefly mentioned.

First, in 1969, under the Petroleum (Drilling and Production) Regulations, MNOCs operating in the country were obliged to Nigerianise their staff, from managerial to both the skilled and unskilled level within fixed periods.[108] That means under the Act, the MNOCs are expected to employ and train Nigerians who would within the stipulated periods assume the responsibility of running the industry from the exploration to marketing stages. Although, it appears at the time that, the emphasis of the government seemed not to be very much on acquisition of oil technology *per se* but rather on employing as many Nigerian citizens as possible to the industry. The desire to acquire technological know-how in the field of petroleum arose later in the 1970s.

Secondly, in 1972, the government established the Petroleum Training Institute at Warri. Its main functions according to the law establishing it were to "provide courses of instruction, training and research in oil technology and to produce technicians and other skilled personnel required to run the oil industry."[109]

Thirdly, government established the Petroleum Development Fund in 1973 for the training of nationals to qualify as graduates, professionals, technicians and craftsmen in

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108 These issues are addressed at length in Chapter Seven infra.

109 See Section 17 of the Petroleum Training Institute Act 1972. Laws of the Federal Republic of Nigeria 1973.

engineering and management studies in the oil industry.[110] The government is not the only contributor to this fund; the MNOCs also make contributions as they may freely wish to.

Fourthly, the 1972 and 1977 Nigerian Enterprises Promotion Act (NEP Act) also known as Indigenisation Acts, were promulgated and require in defined degrees Nigerian equity participation in the country's business enterprises.[111] The *raison de'tre'* of the Indigenisation Laws, as seen above, is to raise the proportion of indigenous ownership of industrial investment in the country. The degree of participation in each case depends on which of the three separate schedules the specific enterprise belongs to. Some of these participation agreements involve shared technological secrets and research, acquisition of patents, manufacture, installation of existing or new technological innovations in the industries concerned.

Fifthly, through the instrumentality of the National Office of Industrial property Act, (NOIP Act) the Office of Industrial Property was established.[112] The office is responsible for the registration of technology transfer transactions in the country. Part of its functions is to ensure that training clauses are inserted in agreements submitted for registration. It also monitors the businesses

110 This was established by the Petroleum Technology Development Fund Act 1973 No 25. Laws of the Federal Republic of Nigeria.

111 For detailed exposition on this see Tobi, N. "The Nigerian Enterprises Act" 1981, 15 JWTL 543-581.

112 The National Office of Industrial Property Act 1979 Laws of the Federal Republic of Nigeria, 1979.

involved in the agreements to ensure continued adherence to and discharge of obligations by the parties involved.[113]

Sixthly, in 1989, government through the NNPC signed a technology transfer and training agreement with BECHTEL which led to the formation of a company called NETCO.[114] Under such agreement, BECHTEL is obliged to transfer oil technology to NETCO through a specific training programme which will ensure that both employees of NETCO and NNPC benefit under the scheme.

Aside from the afore-mentioned efforts by government, we shall see that provisions in every petroleum development contract between the NNPC and the MNOCs contain provisions on training of manpower for the acquisition of technological capability in the oil sector. On the whole, government seems to place greater emphasis on development of manpower and technology transfer in its efforts towards attaining self-reliance in the running of the oil industry.

2.4 RECENT DEVELOPMENTS

The changes that have occurred in recent years in International oil Market indicate that there is need for Nigeria to diversify her economy since total dependence on oil cannot go on *ad infinitum.* This is partly due to the fact that the growth of world demands for oil is on the decline as alternative sources of energy like gas, coal, nuclear and solar energy are being developed.[115] Also it is

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113 This discussion draws on Osunbor O.A. "Laws and Policy on the Registration of Technology Transaction in Nigeria" 1987, 12 JWTL, p.125 See also Date-Bah, S.K.,"Transfer of Technology to Nigeria and Patents And Designs Act 1970" 25 JAL 1981 p.112.

114 See Article 4 of NNPC/BECHTEL Agreement. February 21 1989.

115 For a lucid account on developments in relation to alternative sources of energy see Hamilton, A., (Ed) Oil the price of power. Michael Joseph/Rainbird. 1986 pp149-171.

partly because petroleum is a wasting or finite resource and cannot be extracted for over an interminable timespan. A statement by Marinho in a paper on "Oil politics and National development in Nigeria" is even more explicit here. He posits that,

> "For the next generation of Nigerians, oil is not going to play any significant role in the national development effort. Therefore how that generation of Nigerians will survive will be largely based on the developments that are put in place today."[116]

In the light of the above, therefore, government is making several moves to diversify the oil industry in order to generate other sources of income. Currently, the government is committed to the completion of its natural gas and petrochemical projects.

2.4.1 LIQUEFIED NATURAL GAS PROJECT.

Natural gas can be harnessed and exported just like oil to earn more foreign exchange for an oil exporting country. To do this the gas has to be liquefied. When natural gas is cooled to very low temperatures and brought to a liquid state, it is called liquefied natural gas (LNG). Presently, Plans for Nigeria,s LNG plant are in progress. Nigeria is endowed with abundant natural gas which is produced in association with petroleum, although the gas is largely flared-off.[117] It was in order to stop the further wastage of such a valuable resource that the LNG Project was conceived. In the words of the Minister of Petroleum Resources;

116 Quoted in "Nigeria : A regenerative economy or vegetative existence? 1985 Alumni Lecture delivered by Chief F.R.A. Marinho. Former Managing Director NNPC at University of Ibadan, Nigeria June 14 1985 p.3.

117 See G, Etikerentse., Nigerian petroleum law. Macmillan publishers 1985 p.117.

> "The LNG project is a top priority project of the federal government. It is one of the national strategies to diversify the foreign exchange earnings and enhance the exploitation of the abundant gas resources. Although this project has long been on the drawing board, the present Administration is highly committed to its total implementation."[118]

Thus, the government's first step was the incorporation in 1990 of the Nigerian LNG Company (NLNG) as a joint venture project between NNPC on the one hand and SHELL ELF and AGIP on the other. The participation interests of the parties in the project are: the government of Nigeria-60%, SHELL-20%, AGIP-10% and ELF-10%. The participants have signed an interim services agreement or contract which defines the priorities and procedures for project development.[119]

Plans are now at advanced stages for the first delivery of the Nigerian LNG in 1995/96. Markets have been identified in Western Europe. These include major gas companies in Germany, France, Italy, Belgium Spain and the UK. So far, it seems Nigeria's LNG project will be a profitable venture and worthy of the huge investment involved in it. Not only are the reserves abundant, the participation of experienced joint venture partners will enable it attain competitive levels of efficiency when operational.

2.4.2 PETROCHEMICAL PROJECT.

The same considerations of the need to diversify the natural resource base of the country lie behind Nigeria's long standing plan to establish a petrochemical industry. The petrochemical industry is conceived by government as a major

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118 Address by Professor Aminu J., Minister of Petroleum Resources on the activities of the Nigerian oil industry. West Africa Magazine May 5 1991 (Advertiser's Announcement)

119 Interview Information with NLNG Company official at Lagos. November 1989. For more discussion on the joint venture agreement in the NLNG company see chapter 5.

investment, because of its role as input generator for a variety of industries such as agricultural and pharmaceutical industries. The Nigeria Second National Development Plan (1970-74) recognised the importance of Petrochemical industries in the rapid industrial transformation of the nation and stated that the project is "designed to broaden the industrial base of the economy and promote a better use of the country's mineral resources like natural gas and petroleum.[120] During this plan period, the first significant feasibility study of the project was carried out and it was concluded that the economic viability of the project depended on finding an outlet for one of the natural gas components- 'methane' which normally accounts for over 85 per cent of gas.[121] The study observed that the outlet for the methane gas, which is equally an excellent combustible hydrocarbon for generating electricity could be used at the country's power stations. Other potential outlets envisaged at the time included the Steel Projects and the Fertilizer company in the country.[122]

During the Third National Development Plan (1975-80) the project continued to be recognised as a key project which will help transform the economy and provide the much needed base for industrialisation. Hence, in 1976, government appointed CHEM SYSTEMS of UK as technical adviser on the project. The Company produced a number of reports including those on the project implementation, market potential,

120 The Second National Development Plan document. Plan period 1970-74 Federal Ministry of Information Lagos 1970.

121 The feasibility study was conducted by a company called Foster Wheeler Ltd. For details see , Understanding the Nigerian Oil Industry op.cit. pp.52-53.

122 Interview Information.

process review, selection of technical partner etc. Based on the reports, a three-phase programme of implementation was devised. The first phase which was attached to the Warri and Kaduna Refineries have been completed. It came on stream in 1988 with the Linear Alkyl-Benzene Plant which is vital for producing inputs used for the manufacture of products such as bottles crates, automotive products and floor carpets, having a capacity of 30,000 metric tons per year.[123] The second phase, when completed, is aimed at satisfying the growing national demand in the building, automotive, agricultural, electrical, textile and other industries. It is expected to be completed by the end of 1991, while the third phase which comprises the rest of the complex is planned to be completed by 1995.

Though these projects will involve huge capital investments, when operational, they will in turn yield much more in terms of their economic value to the country. By producing raw materials for use by local industries (for the manufacture of a variety of items) at competitive prices, they would certainly strengthen the country's economy.

2.5 POSITION OF NIGERIA WITHIN OPEC.

Perhaps, before analysing the position of Nigeria within OPEC and the arguments for and against Nigeria's continuous membership of the organisation, it is plausible to look at the underlying reason why Nigeria joined OPEC. The reason for Nigeria joining the organisation is proffered by Ajomo.[124] He explained that it was as a result of Nigeria's

123 Ibid.

124 Ajomo, op.cit p.13. Professor Ajomo is currently the Director of Institute of Advanced Legal studies, Lagos.

desire for cooperation among all exporting countries to put up unified resistance against the MNOCs' control over production exports and governmental revenue that made her to join the Organisation.. To quote him, "...Nigeria, together with the rest exporting countries (OPEC) realised that they had to hang together or be hanged separately".[125]

Nigeria's relations with OPEC is such that her fortunes grows with the success of the organisation and also declines as the fortunes of OPEC declines. For the sake of illustration, in the wake of the oil price increases of 1973/74 and 1979, Nigeria all of a sudden became so wealthy and affluent. Billions of pounds from oil receipts were poured into her economy. With the capital thus made available, enormous development programmes were embarked upon. But also the oil glut of 1979 and the global recession in the oil market since 1980 affected Nigeria so adversely. The oil glut reduced the demand for OPEC oil from 30 mb/d in 1979 to about 16mb/d in 1984. Non-OPEC oil on the other hand increased from 18 mb/d to over 25 mb/d during the same period.[126] As OPEC is producing less than 30 per cent of total world oil production, it has consequently lost its strong foothold of the oil market and its role in stabilizing the market also weakened. Crude oil prices have been falling since the end of 1981, [127] and the only way to maintain prices at a reasonable level was for OPEC to

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125 Ibid

126 The data were taken from Danielsen op.cit. p.113.

127 This is attributable to the downward pressure on international oil prices exerted by World over production in the 1980s.

allocate quotas among its members so as to control the supply of oil in the market.

Nigeria, (along with Indonesia), is one of the most populated of the OPEC member states. This fact is accompanied by Nigeria's ambitious development plans continuously exposes her to the volatility of international oil market because of the predominance of oil revenues in her national earnings. As a result of this dependence and the effect it has on the economy, Nigeria is described as the weakest link in OPEC's price chain.[128] Commenting on such reliance on oil revenues and its effect on Nigeria, Quinlan averred that,

> "President Shehu Shagari's civilian government (1979-83)...is being forced to slash vital development spending in response to the slump in Nigeria's oil earnings. The move together with the 10 per cent discount introduced...makes Nigeria as OPEC's weakest member in time of stress although the government has played an increasingly hawkisk role when world oil supplies have been tight. The key to both stances is Nigeria's teeming population and the desperate lack of other significant industrial or agricultural exchange earning ventures."[129]

The above scenario therefore necessarily exposes the development plans of Nigeria to insecurity. An example of this could be taken from the country's Fifth Development Plan (1986-90). The projected cost was N80 billion and a projected monthly import of N1.3 billion. These figures were premised on a projected crude oil production of 2.3 mb/d at $35.00 per barrel.[130] Thus with the advent of oil glut and

128 Petroleum Economist at p.154 in an Article entitled- "Nigeria -weaklink in OPEC's price chain." April 1982.

129 Ibid at p.425 in an Article entitled- " Nigeria- Market slump slashes revenue," October 1981.

130 Interview Information.

with it a fall in oil price, there was not much the government could do under the circumstance.

Therefore, the present bleak future of the oil market, the decrease in demand of OPEC oil and the major new discoveries in Non-OPEC countries-Mexico, Alaska and the UK- all led to the rationale of Nigeria continuing as a member of OPEC to be questioned. Opinions are, however, divided between whether Nigeria should quit OPEC or continue its membership in the Organisation.

The "quit OPEC school" of thought argue that in the face of Nigeria's current economic problems, she would be better off quitting OPEC and thereby free herself from both the OPEC production quotas as well as OPEC's pricing policies. By leaving the Organisation, they argue further that Nigeria could be able to produce as much oil as she chooses and the resultant inflow of revenue would contribute immensely to economic recovery. In other words, the country would then be left to make both production and pricing decisions in its own interest. By taking that course of action, the argument goes, Nigeria would be able to reap any benefits of OPEC's actions without being subjected to the dictates of the Organisation. Such countries as Norway, Mexico, Egypt, Malaysia, Brazil and Britain are cited as examples of countries that reap such benefits. It is further argued that by quitting, Nigeria would be in a better position to contract as many counter-trade deals or discounts arrangements as she deems fit without the fear of having a body constantly reviewing the country's production and pricing systems.[131]

On the other side of the coin, the "pro OPEC" school of thought argue that Nigeria has more to gain in the nation's continued membership of the organisation. The arguments in support of this pro-OPEC stance will be adduced shortly. Suffice it to mention here that I belong to this school of thought.

It is my opinion that adhering to the arguments advanced by the "quit OPEC school" would be counter productive to the country. Infact, doing so will be equivalent to Nigeria turning to bite the fingers that had been feeding her. This is because, it cannot be guaranteed that all the oil produced can be sold much less sold at an attractive price. The law of over-supply would lead to a further depression in the market and the resulting price decrease would harm Nigeria immensely. Since Nigeria has very little oil reserves compared to the rest members of OPEC,(See Table above) and it sells to the same Western market, the OPEC members might decide to act against Nigeria by under cutting Nigerian prices and frustrate her efforts to sell more oil. Further, one must take into account the fact that the Production cost per barrel of crude oil is much higher in Nigeria (though cheaper than in Alaska or the North Sea) than it is in the major gulf OPEC states.[132] In addition,

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131 See Akinbobola. A., Should Nigeria be in OPEC? NIIA, Monograph Series, 1979.

132 This point is taken from Jallo, S.M., " The development of the petroleum industry and Petroleum Law in Nigeria. LL.M. Thesis 1989 Centre for Petroleum and Mineral Studies. University of Dundee p.83. Also in my view this might not be unconnected with the fact of the differences in the terrains in which exploration works are carried out in these countries. For example, whereas the exploration and production of oil in the U.K.is

Nigeria's withdrawal might also trigger off other withdrawals. Such a move would no doubt lead to the disintegration of OPEC. When this happens, each exporting country will now deal individually with consuming countries and MNOCs on issues of price and quantity. This will be worse for countries like Nigeria and Indonesia, with limited reserves, high population and total dependence on oil. Indeed according to Onoh,

> " A break up of OPEC will open up the flanks once more for the oil majors who have been waiting on the side lines for over a decade to start a fresh manoeuvre for monopoly in order to play their former roles."[133]

Thus, it is submitted that the benefits of membership byfar outweigh the current problems of Nigeria resulting from its membership. The popular adage 'unity is strength', still holds good for OPEC inspite of its present problems. For instance, through unity OPEC members have been able to destroy the monopoly status of the Seven majors who in the past exploited the resources of memberstates paying what amounted to token rents and royalties and refusing any participation by governments of these countries in the industry. But through unity of purpose OPEC memberstates are now participating in petroleum production and refining and in other allied industries such as the LNG and Petrochemical projects. In the same vein memberstates have befitted from each other through adopting petroleum development agreements initiated and operated satisfactorily by other members.

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largely carried out off-shore, in Nigeria most of the oil is produced on-shore with a little in off-shore areas.

133 Quoted in Onoh, J.K.,The Nigerian Oil Economy. From Prosperity to Glut. St. Martin's Press, New York. 1983 at p. 143.

Similarly, by coming together OPEC memberstates have been able to coordinate and unify petroleum prices. From merely $1.80 per barrel of oil in 1960 the price of oil per barrel reached the bench mark of about $41 in 1982. Even though at present the price of oil per barrel ranges between $18-20 per barrel.[134] This price level would have been unattainable if OPEC memberstates had entered the oil market as competitors. OPEC still maintains a monopolistic position in the world oil market since it has a combined total oil reserves of about 60 per cent of the world and controls about 90 per cent of the total world traded oil.[135] Its position as a monopolist has helped it fix oil prices which are consistent with the inflationary prices of imported manufactured goods from the industrialised countries and enabled it to match the established prices with the appropriate production quota for the entire members of the Organisation.[136]

OPEC memberstates also derive benefits in the area of research, specialised technical advice, technological transfer, manpower development and world economic analysis by pooling their resources together. Through exchange of programmes OPEC members have benefited tremendously from the experiences of memberstates at very least cost. A country like Nigeria, as yet still backward in oil technology, stands to gain more from the above areas of cooperation.

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134 This information draws on Newswatch Magazine (Nigeria)June 17 1991.

135 The following discussion draws on International Petroleum Encyclopedia, 1986 Tulsa Oklahoma. Pennwell Publishing company.

136 Ibid.

It remains to be said that the solution for Nigeria is not in quitting the Organisation but in her effective management of the oil resources through diversification of her oil dominated economy. Since oil is the main engine of growth of the economy at present, and since it is government's objective to "transform the country into a modern state, technologically and industrially,"[137] the prospects for the realisation of these objectives, in my view, lie in her continuous membership of the Organisation and not outside it.

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137 Quoted in The Second National Development Plan document. op cit.

N.N.P.C.: THE NIGERIAN STATE-OWNED OIL COMPANY.

3.1 INTRODUCTION:

In all the oil producing countries, State oil companies (S.O.C)[1] were formed for a variety of economic or political reasons. The governments of such countries use these companies as a medium to partake in and in the long run take charge of the operations of their oil industries. In this chapter, I discuss the establishment and development of the Nigerian National Petroleum Corporation (NNPC) as a state-owned oil company. The organisation, management and legal structures of the corporation and its relation with the rest of the industry are also examined. The discussion ends with a look at the NNPC as a party in the negotiation of petroleum development contracts with the MNOCs.

3.2 BACKGROUND ACCOUNT ON FORMATION OF THE CORPORATION

Over the past seven decades, many SOCs have emerged in both the oil producing and non-oil producing countries of the world regardless of the economic strengths or political ideology of their respective governments. In fact, the first purely SOC to appear on the international petroleum scene was in Argentina in 1910.[2] The Italian *Azienda Generale Italiana Petroli* (AGIP) was formed in 1924. From then on, other SOCs were established. For example, the British

1 The term 'state oil company' (SOC) is used here to denote oil companies owned by the state and subject to total or a substantial degree of political or economic control by the state.

2 The company is called the Yacimientos Petroliferos de la Argentina. It was established as a measure to transfer the supply of fuel for the armed forces from foreign companies to a government owned company.

National Oil Corporation (BNOC) was established in 1976. In all, it is estimated that to date there are about 70 SOCs in the world excluding those of the former Soviet Union.[3] The activities of these companies range from full scale monopolies running an integrated operation of their state oil industries to joint participation with MNOCs in their operations. The desire of governments to enter the oil business is based on a variety of reasons. On the part of non-oil producing countries, their reasons for setting up SOCs has been to engage in petroleum operations for the sake of ensuring to their respective governments the security of oil supply and to search for oil in their countries as well as overseas.[4] As in the case of oil producing countries, the arguments often advanced in defence of the establishment of the SOCs are varied and have changed as the structure of the international petroleum industry moved through different stages of its development. Some of these arguments include:
(1) the MNOCs may fail to develop the oil resources of the country fully because they have other interests elsewhere;
(2) the establishment of the SOC satisfies national pride and a sense of achievement where domestic control of national resources is regarded by the government as an affirmation of nationalism;

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3 The information in this paragraph is owed to Grayson, E.G., National oil companies. John Wiley & Sons New York 1981 chapters 1 and 7 and Ferrier, R.W.and A. Fursenko (eds) Oil in the world Economy, Routledge, London, 1989 chapters 1 and 2.

4 See Khan, K.I.F., "National Oil Companies: form, structure, accountability and control," in Khan, K.I.F., Petroleum Resources and Development: Economic Legal and Policy Issues for Developing Countries, Belhaven Press London 1987, chapter 11; R. Bentham, "Legal Status of State Petroleum Companies" in T.Walde & N.Beredjick (eds) Petroleum Investment Policies in Developing Countries, Graham & Trotman, London 1988, chapter 12 and Grayson op.cit. p.8.

(3) the SOC can enter into a variety of agreements e.g. state-to-state deals, something that MNOCs do not engage in; (4) for political reasons some governments do not want to be seen as leaving their major economic resources entirely to the discretion of the foreign MNOCs;[5] and above all (5) to maximise their benefits from petroleum operations because of the expectation that these corporations would bring additional revenue. In my view, this seems a logical expectation, since oil rents constitute the financial basis for implementation of their economic growth plans, and these corporations being public enterprises closely related to their governments, will naturally desire the maximisation of income from their resources.

In the main, historically, the emergence of SOCs in oil producing developing countries, such as Nigeria, is linked to the struggle against the old traditional concession regime whose terms were unfavourable to these countries. I will not dwell much here on the inequitable nature of the old concession regime because it is treated in the succeeding chapter. But suffice it to say that under such regime there was virtually no role for the producing countries to play except to receive the modest fees for the surrender of the exploitation rights over their hydrocarbon resources to the MNOCs for sometimes as long a duration in certain countries as 99 years. Also, as we saw in chapter three, from the late 1950s and early 1960s oil producing

5 This is explicit in the preamble to the statutes that created many of the OPEC States oil companies as noted by Adeniyi, K.,"The legal anatomy of OPEC state oil Corporations: Perspectives on the Nigerian National Oil Corporations." East African Law Review 1975 Vol.8.

countries of Latin America, Middle East and Africa, thanks to the "minors", began to challenge the "majors", who were the sole concessionaires at the time. These countries were concerned with extricating themselves from the bondage of the early concessions regime and wanted better deals which if possible would involve them participating too in the oil operations.

In reviewing the background on the emergence of a SOC in Nigeria, a special credit must be paid to the OPEC. Right from its inception, OPEC had enjoined all its memberstates to, *inter alia,* participate in the activities of the concessionaires in their respective countries. Infact it is said that one of the main considerations for establishing SOCs within the OPEC community was in anticipation of introducing state participation in their prevailing concession agreements.[6] OPEC formally endorsed state participation policy in its Declaratory Statement of Policy of 1968. Consequently, today, all OPEC member countries have set up their own SOCs.

As a member of OPEC, Nigeria complied with the Organisation's Resolution and established her SOC, the Nigerian National Oil Corporation (NNOC) in 1971. The NNOC was the fore runner of the present day NNPC. As intimated also in the preceding chapter, the NNOC was established as a state agency with the power to engage in all phases of the oil industry (from exploration to marketing). But in practice, the operations of NNOC were restricted to oil and

6 See Adeniyi, K., "The legal anatomy of OPEC, op.cit.p.51 and also Zakariya, H.S., "State Petroleum Companies" 12 Journal of World Trade Law 1978 p..482-483.

gas exploration and drilling activities. Due to lack of finance, technical know-how and capability, the rest part of the oil operations (refining, distribution and marketing) were carried out largely by the MNOCs. NNOC had no statutory duty to regulate and supervise the operations of the oil industry in Nigeria. The regulatory and supervisory functions of the government as they affect the oil industry were the responsibilities of the former Ministry of Petroleum Resources. Since the NNOC at the time, operated alongside the Federal Ministry of Petroleum Resources, - with the latter limiting its functions to regulating the operations of the foreign Oil Companies; and because of the dichotomy created by their existence and seemingly independent operations, administrative conflicts and ineffective control characterised the oil industry. The government then thought that the higher standard of the goals and policies set for the petroleum industry would be better achieved if a single body were put in charge of this important sector of the economy. Thus in April 1977, a fully integrated agency of government to engage in oil and gas operations as well as regulate the operations of the industry,- the NNPC was established through the amalgamation of the former NNOC with the then Ministry of Petroleum Resources by the NNPC Act 1977 (Decree No.33 of 1977).[7] The NNPC Act vested all the assets, funds, resources and other movable and immovable property which before that date was vested in and held by the dissolved Ministry of Petroleum

7 In effect, NNPC combined all the NNOC's roles together with the regulatory functions of the former Ministry of Petroleum Resources, -(such functions are currently performed by the Petroleum Inspectorate Division of the NNPC.)

Resources for and on behalf of the Federal Government in the new corporation.[8] NNPC also assumed all rights and interests, obligations and liabilities of the Government under all contracts entered into by the dissolved Ministry of Petroleum Resources for and on behalf of the Government for any purpose for which the dissolved Ministry had responsibility immediately before April 1977.[9] Provisions were also made in the Act to vest in NNPC, the assets of dissolved NNOC and for NNPC to assume all the duties and obligations of NNOC.[10]

It was stated in this regard that

> "The inception of the NNPC marked a radical shift in the administrative structure of the public sector of the oil industry since under Article 21(1) and (2) of the Act both the NNOC and the Federal Ministry of Petroleum Resources were merged to form the new body. The decision to merge the two institutions was inspired by the desire to achieve a measure of unified control... and Government also felt that this action would make optimum use of the relatively few trained personnel then available in the Nigerian Oil Industry."[11]

3.3 DUTIES AND POWERS OF THE NNPC.

From its inception, the NNPC was designed as its forebearer (the NNOC) to be a fully integrated corporate entity charged with the duty of engaging in all aspects of the petroleum operations in Nigeria. This ranges from performing the operational and commercial functions to those of supervisory

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8 See Schedule II Section 8 (2) of the NNPC ACT No.33 1977.

9 Ibid Section 8(3)(a).

10 I owe the account of the events between 1968 and 1977 that led to the formation of NNPC to Turner, T., Oil and Government: The making and Implementation of Petroleum Policy on Nigeria. Ph.D. thesis, 1977, University of London. Her account, I believe, is the only comprehensive study of the period.

11 See OPEC Bulletin July/August 1985 at p.24.

or regulatory nature in the Nigerian Oil Industry. The NNPC Act 1977, the statutory instrument establishing the Corporation sets out the duties in detail as if to emphasise the fully integrated nature of the Corporation. In order to fully understand the extent of these duties and also the powers of NNPC to exercise them, it is necessary to quote verbatim from the statute.

> (1) Subject to the provisions of the Act, the Corporation shall be charged with the duty of:
>
> (a) exploring and prospecting for, working, winning or otherwise acquiring, possessing and disposing of petroleum;
> (b) refining, treating, processing and generally engaging in the handling of petroleum for the manufacture and production of petroleum products and its derivatives;
> (c) purchasing and marketing petroleum, its products and by products;
> (d) providing and operating pipelines, tanker ships or other facilities for the carriage or conveyance of crude oil, natural gas and their products and derivatives, water and any other liquids or other commodities related to the Corporation's operations;
> (e) constructing, equipping and maintaining tank farms and other facilities for the handling and treatment of petroleum and its products and derivatives;
> (f) carrying out research in connection with petroleum or anything derived from it and promoting activities for the purpose of turning to account the results of such research;
> (g) doing anything required for the purpose of giving effect to agreements entered into by the Federal Government with a view to securing participation by the Government or the Corporation in activities connected with petroleum;
> (h) generally engaging in activities that would enhance the petroleum industry in the overall interest of Nigeria; and
> (i) undertaking such other activities as are necessary or expedient for giving full effect to the provisions of this Act.[12]

12 Section 4 (1) NNPC Act 1977.

Similarly, the powers of the Corporation are stipulated under section 5 of the NNPC Act 1977 as follows:

> 5(1) The Corporation shall have powers to do anything which in its opinion is calculated to facilitate the carrying out of its duties under this Act including without limiting the generality of the following, the power:
> (a) to sue and be sued in its corporate name,
> (b) to hold, manage and alienate movable and immovable property;
> (c) to purchase or otherwise acquire or take over all or any of the assets, businesses, properties, privileges, contracts, rights, obligations and liabilities of any other company, firm or person in furtherance of any business engaged in by the Corporation;
> (d) to enter into contracts or partnerships with any company, firm or person which in the opinion of the Corporation will facilitate the discharge of the said duties under this Act;
> (e) to establish and maintain subsidiaries for the discharge of such functions as the Corporation may determine; and
> (f) to train managerial, technical and such other staff for the purpose of the running of its operations and for the petroleum industry in general.

In giving such wide powers, the NNPC is given a chance to grow and operate in a business setting. For instance, its power to create subsidiaries would mean that it would be an operating as well a holding company and consequently there would be a concentration of effort and personnel under the aegis of the parent company which would serve as a directing mind in the establishment of an integrated effort. The effect of this overall structure is to create an entity with a broad range of power to undertake the running of an industry which is clothed with certain commercial and business privileges in order to realise its power to represent the entrepreneurial policies and objectives of the government. It is perhaps with all these in mind that the Government sought to assign such powers including the supervisory role to the NNPC. The supervisory role of the Corporation is carried out through the medium of its Petroleum Inspectorate Department. The NNPC Act in this regard states that,

> 9(1) "There shall be established a department to be known as the Petroleum Inspectorate which shall be an integral part of the Corporation.
> (2) The Minister may delegate to the chief of the Inspectorate such of the powers conferred upon him under the Oil Pipelines Act, the Petroleum Act 1969 or any other enactment, but without prejudice to the generality of the foregoing responsibility for the following matters, that is,
> (a) issuing permits and licences for all activities connected with petroleum exploration and exploitation and the refining, storage, marketing, transportation and distribution thereof; and
> (b) acting as the agency for the enforcement of the provisions of the said Act and any relevant regulations made thereunder by the Minister;
> and notwithstanding the foregoing, any regulatory function conferred on the Director of Petroleum Resources pursuant to the said Act."[13]

Generally, the NNPC operates as an entity in its own right as well as an arm of government. I shall expatiate on this point later. And as far as the discharge of these duties are concerned, it does carry them out in two ways: either (a) directly, by engaging in wholly owned petroleum operations or (b) indirectly through:

(i) joint venture operations with foreign Oil Companies in which it has no shares ownership;

(ii) wholly owned subsidiaries or subsidiaries in which it owns majority shares; and

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13 See Part II, Sections 1 to 2(a)(b) of the NNPC Act 1977. There is the need to add here too that the Act categorically sets out in Section 9(4) that "For the avoidance of doubt, the Inspectorate shall not exercise any commercial functions in respect of any activities of the Government of the Federation relating to the petroleum industry." The said section emphasises the fact that the role of the Inspectorate Division is purely regulatory and nothing more.

(iii) minority share ownership in companies that perform services for oil exploration and producing companies.[14]

Having looked at the multifaceted duties and enormous powers of the Corporation, we now turn to examine its organisation and structure.

3.4 THE ORGANISATION OF THE NNPC.

Basically, two broad divisions make up the NNPC, viz. the commercial division and the Petroleum Inspectorate Division. The commercial section carries out the operational and commercial activities of the Corporation while the Petroleum Inspectorate Unit is a regulatory, enforcement and supervisory agency of the Government with regards to petroleum operations.

The original set up of the NNPC remained unchanged between 1977 and 1988. Between that period, the Corporation had the following set up:

THE OPERATIONAL SECTOR (six Divisions)

<u>Exploration and Exploitation Division</u>: It conducted, directed exploration and managed government interest in the foreign companies operating in Nigeria.

<u>Commercial Division</u>: Sold all crude oil accruing to the NNPC and administered sales contracts.

<u>Project and Engineering Division</u>: This undertook all major engineering and construction activities for all divisions of the NNPC, notably in oil and gas production, refineries and petrochemicals projects.

14 For elaborate account on this see Holies, M.M., Nigerian Petroleum Law and Practice 1987 at pp.181-194.

Pipelines and Product Marketing Division: It operated NNPC's over 7,000 kilometres of pipelines for crude oil distribution and the depots up and down the country.

Marine Transportation Division: It took charge of movements of NNPC's oil, products and cargo by sea.

Petrochemical Division: This was responsible for production of petrochemicals from oil, gas and refined products.

THE SERVICES' SECTOR (three Divisions)

Personnel and Services Division: It provided administrative, personnel and ancillary support for the NNPC's activities.

Finance and Accounts Division: It performed central accounting functions of the Corporation.

Legal Division: It undertook all the legal services of the Corporation.

THE GENERAL MANAGEMENT SECTOR.

Internal Audit Division: Responsible for auditing internal accounting duties of NNPC.

Public Affairs and External Relations Division: In charge of matters of public relations in the Corporation.

Economic and budget control Division: Concerned with planning and budgetary issues of the Corporation.

THE PETROLEUM INSPECTORATE UNIT.

It exercised statutory governmental control over operations in the oil industry through existing and new legislation. The Conservation Division under the Petroleum Inspectorate Unit was responsible for petroleum resource management. The Field Operations Division was responsible for matters dealing with exploration and exploitation.

In 1988, being mindful of the need for changes in its set up to reflect the realities of the situation, the NNPC underwent a structural reorganisation. Today, the NNPC has a new structure. It is a commercially managed integrated international oil company which operates on the same basis as the private oil companies with a mission to profitably explore, develop, produce, process and market crude and refined petroleum and their by-products and derivatives, at competitive prices, both at home and abroad.[15] This new posture of the Corporation, announced by President Babangida when he was promulgating the Commercialisation and Privatisation Decree [16] in March 1988, is a product of a general reorganisation plan of government parastatals in Nigeria, of which NNPC is the largest.[17] Under the said Decree, NNPC was one of the enterprises to be fully commercialised under the aegis of the Technical Committee on Privatisation and Commercialisation (TCPC). 'Commercialisation' is defined in the Decree as "the reorganisation of enterprises wholly or partly owned by the Federal Military Government in which such commercialised enterprises shall operate as profit making commercial ventures and without subventions from the Federal Military Government."[18] Infact even before the promulgation of this

15 Egwuenu, C.I.,"Nigerian petroleum laws and regulations as they affect a commercialised NNPC," NAPETCOR Vol.10 No.2 1989 pp.8-11.

16 The Privatisation and Commercialisation Decree No.25 of 1988. Laws of the Federation of Nigeria. 1988.

17 South's survey of the top 400 firms in sub-Sahara Africa puts the turnover of the NNPC at an estimated $11,000 million and top of the list. With assets running into billions of Naira and employing over 17,000 people, the NNPC can be rightly described as the economic life-line of the country. See South, March 1987, pp.65-80.

18 Although it needs be stressed here that the issue of the commercialised public companies not receiving any subvention from Government Treasury does not apply in the case of NNPC and its subsidiaries. The Government still provides the capital budget

Decree, NNPC had started in 1987, a thorough reappraisal of the whole Corporation as a truly commercial and integrated oil company with a view to defining a long term mission for the Corporation and ensuring a better organisational structure that would enable it achieve its various goals and objectives. The Corporation's power to undertake such reappraisal exercise as well as establish subsidiaries derives from Sections 4(2) and 5(1)(e) of the NNPC Act 1977. The NNPC Act is now said to be under review to provide for the legal framework for a commercialised NNPC. For instance, the provisions relating to the Petroleum Inspectorate need to be repealed as the Inspectorate is now a department of the Ministry of Petroleum Resources and no more an integral part of the NNPC. I will return later to this last point again.

3.5 THE NEW STRUCTURE OF THE NNPC

Unlike its former centralised structure, the new structure of the Corporation now comprises a Corporate Head Office with three groups of functional Divisions and twelve subsidiary companies charged with the execution of the Corporation's business. The reorganisation is designed to place the Corporation in a firm position to compete favourably in the international business environment, in line with its new commercial posture. In his comment in support of the present commercial and decentralised posture of the NNPC, the Group Managing Director of the NNPC, Adams remarked that

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of the Corporation whereas operating expenses are derived from its commercial activities.

> "the objective of the reorganisation is to reduce rigid central control and allow subsidiaries the flexibility necessary to optimise their businesses and operate commercially in the best interest of the corporate body."[19]

The necessity for reorganisation was again stressed by the Minister of Petroleum Resources in a letter to the Chairman of TCPC and I quote:

> "I would like to emphasise that the primary objective of the reorganisation is to make the NNPC an integrated oil company similar to the major companies operating in the country. Very close cooperation between the Corporation Headquarters and the Subsidiaries is therefore necessary in order to achieve the mission of the Corporation."[20]

Under the present dispensation, the NNPC will be adequately funded by the Government. Consequently, full commercial justification will be required for all the Corporation's investments. The Corporation will thus regularly make dividend payments to Government as returns for its investment in the Corporation.

The three groups of functional Divisions under the Corporate Head Office are;

(1) <u>Corporate Services Sector:</u> which looks after Finance, Legal and Insurance, Administration and Personnel, Technology, and Corporate Planning and Development Divisions;

(2) <u>the Operations Sector</u>: responsible for Exploration, Production, Gas, Manufacturing, Petrochemicals and International Trading Divisions; and

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19 Adams, G.A., "Achieving results through integration,": Group Managing Director's 1989 Planning Letter. in NAPETCOR, Quarterly magazine of the NNPC Vol.10 No.1 1989 at p.4.

20 Quoted in Adam's 1989 Planning Letter, Ibid.

(3) <u>the National Petroleum Investment Management Services (NAPIMS)</u>: which oversees the Federation's investment in exploration and production companies. It is responsible for supervising the Joint Venture activities of the Joint Venture partners; it markets the Federation's crudes and engages in direct exploration services in new oil fields relinquished or never before explored by foreign oil companies.

The twelve subsidiaries have since become operational as strategic business units with financial autonomy and freedom to manage their businesses within the ambit of enabling laws and regulations. They include;

1. Nigerian Petroleum Development Company Limited.
2. Integrated Data services Limited.
3. Nigerian gas Company Limited.
4. Pipelines and Product Marketing Company Limited.
5. Eleme Petrochemical Company Limited.
6. Kaduna Refining and Petrochemical Company Limited.
7. Warri Refining and Petrochemical Company Limited.
8. Port-Harcourt Refining Company Limited.
9. Nigerian Liquefied Natural Gas Limited.
10. National Engineering and Technical Company Limited.
11. Hyson (Nig.) Limited.
12. Calson Bermuda Limited.

A brief summary of the equity holdings and activites of these subsidiaries are contained in Table 3.1

Table 3.1

SUBSIDIARIES AND AFFILIATE COMPANIES IN COMMERCIALISED NNPC.

NAME	% HOLDING	TYPE OF ACTIVITY
1.NIGERIAN PETROLEUM DEVE LOPMENT COMPANY LTD.	100%	Petroleum exploration and production.
2.INTEGRATED DATA SERVICES LIMITED	100%	Geological survey, engineering and computer services.
3.NIGERIA GAS COMPANY LTD	100%	Gas transmission and local gas marketing.
4.PIPELINE AND PRODUCT MARKETING COMPANY LTD.	100%	Petroleum distribution by pipelines.
5.ELEME PETROCHEMICAL COMPANY LIMITED for export.	100%	Manufacturing of petrochemical products
6.KADUNA REFINING COMPANY LIMITED.	100%	Refining oil products.
7.WARRI REFINING COMPANY LIMITED.	100%	"
8.PORT-HARCOURT REFINING LIMITED.	100%	"
9.NIGERIAN LNG LIMITED	100%	To liquefy gas and sell same by export
10.NETCO LIMITED.	100%	Engineering consultancy and construction.
11.HYSON LIMITED	100%	Facilitates movement of oil out of refineries.
12.CALSON BERMUDA LIMITED	100%	Involved in marketing crude oil overseas.

Source: Napetcor (NNPC) Second Quarter 1989.

All the twelve subsidiaries are limited liability companies some wholly owned by NNPC while others are jointly owned between NNPC and foreign and local investors.

The commercialisation of the NNPC have created divided opinion both within and outside the NNPC between those in favour and those against it. The report of a Task Force on Commercialisation and Privatisation of NNPC conducted in 1989 noted that majority of the senior management staff and technocrats of the NNPC believe the current commercialised structure is in the best interest of the NNPC. The other group disagreed and said that the breaking up of the NNPC into subsidiaries or autonomous units is inimical to the overall objective of the Corporation and cannot serve the commercialisation programme. To buttress their argument, the latter group posited that having numerous subsidiaries would mean creating as many Boards of Directors as there are subsidiaries which again in effect means increase in the level of non-technical and non-economic outside influences in the activities of the Organisation. In coming to that conclusion, they assume, as is often the case in Nigeria, that majority of the appointees to such boards would be top civil servants or politicians appointed by way of party patronages instead of appointing experts in oil activities in such positions.[21] However, since the bottom line of the commercialisation exercise as Adams had remarked, is to make profit, one hopes such practice will not apply, instead appointments to the Boards will be made on the basis of members having some knowledge or experience in petroleum matters. At present, one can say that the future of the NNPC and indeed that of the Nigerian Oil industry largely depends on the success or otherwise of the subsidiaries under the

21 Data from Interviews at Lagos, 1989.

commercialised NNPC.

3.6 THE PETROLEUM INSPECTORATE UNIT

The role of the Petroleum Inspectorate Unit (PIU) in the Nigerian Oil Industry has been variously described as that of a 'policeman', 'protector', 'watch-dog', 'guardian', etc, of the industry. The power of Government regulatory control on the industry is vested in the PIU. Under the new dispensation, the PIU is an independent arm of the NNPC and performs the regulatory functions which the former Ministry of Petroleum Resources used to perform.[22] In this regard, Olisa commented that:

> "It is probably a better arrangement for the Inspectorate to be fully independent of the Corporation in the same manner as the regulatory and enforcement Ministries or government agencies of many oil producing countries are autonomous of their national oil companies, as Algeria, Canada, France and Norway. With such an arrangement the Inspectorate will not depend on the corporation for funding, staffing, general services and facilities for it to perform its statutory duties. The Inspectorate need not, and preferably should not, be a part of any Ministry. Rather it should be an enlarged entity by itself or as a part of the Petroleum or Energy Board reporting to the Minister of petroleum Resources."[23]

The PIU was set up through the instrumentality of Section 9(1) of the NNPC Act 1977, and its duties may be summarised

22 The details of these functions are spelt out in a number of laws and regulations relating to the Oil Industry, these include amongst others the Mineral Oils Safety Act 1963, Oil in Navigable Waters Act 1968, Petroleum Amendment Decree 1973, Associated Gas Re-Injection Decree 1979, etc.

23 Olisa, M.M., Nigerian Petroleum Law and Practice. 1987 at p.200. The view that the Inspectorate should be independent and removed as a department under NNPC was one of the earlier recommendations of the Justice Ayo Irikefe Tribunal of Inquiry set up to investigate a press allegation of missing £1.8 million NNPC funds in its account with the London Midland Bank in 1980.

as follows:

(a) Overseeing all the activities of all the companies licensed to engage in any oil activities in the country to ensure compliance with the laws and regulations to the oil industry.

(b) Monitoring oil industry operations to ensure that national goals and policies in the oil sector are followed.

(c) Keeping records of all the occurrences and activities in the oil industry.[24]

In effect, the PIU is the agent for the enforcement of all the laws and regulations relevant to the Nigerian Oil Industry. In overseeing the performance of all the companies involved in oil operations within Nigeria it ascertains that they carry out their operations according to "good oil industry practices"[25]

The PIU also maintains a close watch on the activities of the Petroleum Training Institute, Warri and the Petroleum Technology Development Fund which was set up mainly for the provision of funds for training of Nigerians in the Petroleum Industry.

Furthermore, the PIU works with the Ministry of Internal Affairs in considering expatriate quota applications. The rationale of the imposition of expatriate quotas in the Nigerian Petroleum Industry is that by limiting the numbers

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24 Section 9(2) NNPC Act 1977.

25 The phrase itself is often used as a term of art in many jurisdictions where oil operations take place, e.g. the U.S. and the U.K., but in no jurisdiction has it received a single authoritative definition. There are, however, operational codes of practice drawn up by, e.g. the American Institute of Petroleum and the Institute of Petroleum in the U.K., and a failure to follow these practices might well be used as evidence of a failure to follow "good oil industry practices and standards."

of non-Nigerian staff a higher level of training of Nigerians for the Industry will result. The PIU has been known to object to expatriate quota applications by companies when it is aware of qualified Nigerians who can do the jobs for which the expatriates are being brought in.

It is evident from the foregoing that the task of the Inspectorate is immense. It is equally clear that, having regard to the dearth of competent indigenous manpower and petroleum technology capability in the Industry, the effective implementation of most of the duties of the Inspectorate is likely to lag behind public expectation. It has been criticised often from both within and outside the oil industry as being 'passive' rather than 'participatory' in the performance of its duties. One commentator, Osuno, identified several problems of the Inspectorate. These include the problem of distrust by other law enforcement agencies, especially as to the scope of the agencies statutory powers, inadequate capacity to effectively monitor the entire oil industry in Nigeria and lack of public support, among others. He also blames this on the fact that the work of the PIU is severely hindered by a lack of coordination of the various Ministries or Departments whose functions overlap in the regulation of diverse aspects of the Nigerian Petroleum Industry.[26] It is against this background of lack of an overall coordination in the

26 Osuno, B.A.,"The role of the Petroleum Inspectorate Division of the NNPC as the guardian of the Nigerian Oil Industry." A paper presented at the National Workshop on Petroleum Law, organised by the Department of Jurisprudence and International Law, Faculty of Law, University of Lagos 1984 at p.6.

Industry that the new initiative towards the independent status for the Inspectorate as well as the commercialisation of the NNPC are welcome. It is hoped that in the long-run these initiatives will result in detailed and effective regulation of activities of all those involved in the operations of the Nigerian Petroleum Industry.

3.7 LEGAL AND MANAGEMENT STRUCTURE OF THE NNPC

The affairs of the NNPC are managed by a Board of Directors consisting of the Chairman who is also the Minister of Petroleum, and the following members:

(a) the Permanent Secretary, Federal Ministry of Finance,

(b) the Permanent Secretary, Federal Ministry of Economic Development,

(c) the Group Managing Director of NNPC and

(d) three other persons appointed by the President "being persons who in the opinion of the President have, by reasons of any necessary ability, experience, specialised knowledge of the oil industry or their business or professional attainments, a special contribution to make to the work of the Corporation"[27] Furthermore, under the present structure of the NNPC, each subsidiary has a representative on the Board of Directors. The Group Managing Director is the Chief Executive of the Corporation responsible for the execution of all policies of the Corporation and the day-to-day running of its activities. The Minister of Petroleum is the political controller of the Corporation. There is also a

27 Section 1(1)(2) NNPC Act 1977.

Secretary of the Corporation who is not a member of the Board.[28]

Under the now commercialised NNPC, the Group Managing Director heads the Holding Office of the Corporation and the three groups of functional Divisions are headed by Group Deputy Managing Directors. The subsidiaries also have their own Board of Directors and their Chief Executives. This is designed *inter alia* to promote maximum efficiency in operations by seeing to it that the subsidiaries are insulated from direct government interference to the same extent as any private company.

The relationship between the Holding Office and the subsidiaries is defined by corporate policy, procedures and financial control. The subsidiaries present their budget proposals and programmes to the Holding Office for approval. The holding Office in turn passes on policy instructions to the subsidiaries for execution and allocates resources for programme implementation. On a day-to-day basis, the subsidiaries are independent of the Holding Office in the execution of their programmes. In their own turn, the subsidiaries make dividend payments to the Holding Company annually, who would in turn pay dividends to government as its sole shareholder. In essence, the NNPC is both an operating as well as a holding company responsible for deciding policies of its subsidiaries and directing the execution of government decisions and intentions.

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28 Ibid Section 2(2).

Though NNPC is now an integrated international oil company which has wide scope to operate on a commercial basis as private companies with a view to make profit, it operates as a commercial public corporation. Unlike private oil companies, both the Holding Company and the Subsidiaries are funded by the government. In other words the Government is the sole or majority shareholder and the general management and control of the Corporation rest with the State. But because of their corporate status, the NNPC and its subsidiaries are accorded a legal status and expected to operate with the flexible and enterprising spirit of a private enterprise. Both Friedman and Ghai make the point that balancing the need for governmental control with that of the financial and managerial autonomy essential to realising the objective or goal of the Corporation is perhaps one of the most important yet elusive problems in the operation of a public corporation.[29] Commenting also on the nature of public corporations in general, Lord Denning said;

> "The significant difference in this corporation is that there are no shareholders to subscribe the capital or to have any voice in its affairs. The money which the corporation needs is not raised by the issue of shares but by borrowing; and its borrowing is not secured by debentures but is guaranteed by the Treasury...It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government. A striking feature of the commercial public corporation is that it acts

29 Friedman, W., " Forms and Functions of Public Enterprises: A Comparative Survey," 1969 Vol.2 Current Legal Problems p.79 at p.94 and Y.P. Ghai and A. Bohn (eds) Management of public enterprises through state holding corporations, International Centre for Public Enterprises in Developing Countries, Ljubljana,. Vol 10 , 1990 p.127.

> on its own behalf even though it is controlled by a government department."[30]

Given that, the position under the NNPC Act by which the Board of Directors of the Corporation and its subsidiaries are constituted deserve some special comment. This is because the NNPC Act is silent as regards what sort of qualifications, expertise or experience members who are appointed to the Board should possess. This applies both to members appointed to the Boards of NNPC, its subsidiaries and the joint venture companies. For example, (as noted above) majority of the directors including the Minister are appointed either on the basis of their political background or official affiliation with some of the Ministries. The three non governmental members to be appointed by the President are equally appointed by reason of 'their business or professional experience, it is believed they would have special contribution to make to the work of the corporation' but not necessarily because of their knowledge or experience specially in the petroleum industry. Most of these Directors have civil service orientations and are ignorant of the petroleum management business and lack the competence to participate at board sessions. As a result, these Directors, owing to lack of any background of petroleum knowledge, and coupled with the pressure from their primary assignments, tend to depend largely on the advice of subordinates in their respective Ministries. The subordinates are themselves sometimes even more ignorant of the issues relating to petroleum development operations. In that way, the Board's

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30 Tamlin V.Hannaford 1950 1 K.B. p.18.

decisional independence is jeopardised by the preponderance of official directors or 'party faithfuls' which makes it relatively easy for the MNOCs or any opposite party to influence important decisions affecting the corporation since those Directors do not fully understand what is going on.[31] This sort of Board, according to Handson, is incapable of ensuring energetic management or of interposing its authority between the Minister and the enterprise. Intermediary decision functions may then be raised to ministerial level, which is too high, or reduced to management level which is too low.[32] By way of illustration, I have supplied a brief profile of the Members of the Board of Directors of the NNPC and one of the joint venture companies in Tables 3.2 and Table 3.3 below. This is representative of the composition of the membership of the other Boards in the industry.

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31 This information is got from an Interview Session in Lagos.

32 See Hanson, A.H., Public Enterprises and Economic Development, London, Routledge and kegan Paul.1959 p.404 and also Elias, T.O., "Public and Private Enterprises in Nigeria" in Friedman, W. (ed) Public and Private Enterprise in Mixed Economies, Columbia University Press. 1974 p.88

TABLE 3.2

PROFILE OF MEMBERS OF NNPC'S BOARD OF DIRECTORS, 1990.

NAME.	**AREAS OF INTEREST.**
Professor J. Aminu (Minister)	Cardiologist, Educationist, and Former Vice Chancellor.
G.P.O. Chikelu	Oil expert.
Dr. T.M. John	Oil expert.
Daniel Akoh	Geologist.
Mrs. J.O. Maduka	Electrical and mechanical engineering consultant.
Kanu Obioha	Civil Engineer.
Prof. S. Adesina	Architect, University teacher.
Dr. S. Kumo	Lawyer, University teacher.
Alhaji Y. Maigari	Industrialist and educationist.
S.I. Alete	Accountant.
U.K. Bello	Dir. General, Administrator (Civil service).
J.D. Edozien	Dir. General, Administrator (Civil service).
Alhaji M. Hayatudin	Dir. General, Administrator (Civil Service).
Alhaji Al-Hakim	Dir. General, Administrator (Civil service).
Alhaji A. Shueibu	Dir. General, Administrator (Civil service).
Chief M.O. Feyide	Dir. General, Administrator (Civil service).
Chief A. Onyeobi	Dir. General, Administrator (Civil service).
Dr. B. Briggs	Economist, educationist.

Notes: Under the new civil service structure in Nigeria, the post of Director General stands for the former Permanent Secretary.

Sources: Napector (NNPC) First Quarter, 1990 and Osso, N.(ed) Who's who in Nigeria, Newswatch Magazine publication, 1990.

TABLE 3.3.

PROFILE OF NIGERIAN DIRECTORS IN SHELL PETROLEUM DEVELOPMENT COMPANY NIGERIA LIMITED, 1990.

NAME	AREAS OF INTEREST.
Godwin E. Omene	Insurance Executive, Administrator.
Chief E.A.O. Shonekan	Lawyer, Administrator and Industrialist.
J.B.O. Kumola	Economist, Management Consultant.
N.A. Achebe	Engineer, former University teacher.
Dr. V.O. Achimu (Secretary)	Lawyer.

Source: Osso, N.(ed), Who's who in Nigeria, Newswatch Magazine publication, 1990.

In the light of the above, a comprehensive statutory prescription where only oil experts are appointed as directors will go a long way towards solving these problems. That is the situation in Venezuela and Iraq where the SOCs have full time Directors whose qualifications are prescribed in their constitutive statutes. For example, in Venezuela, the Board of Directors of its SOC consists of the Minister for Mines and Hydrocarbons and six recognised petroleum experts appointed by the National Executive.[33] While in Iraq, the Minister of Petroleum nominates the Board Members, and the Company's statute prescribes guide-lines as to the qualifications and experience of the persons whom the Minister may propose to the Council of Ministers.[34]

33 See Article 8. Statute of the Corporation Venezuela Del Petroleo, Decree No.260 1960

34 See Article XIII Statute of Iraq National Oil Company Law No.123 1967.

3.8 THE NNPC AS PARTY TO PETROLEUM CONTRACTS.

The NNPC is the agency through which the Nigerian Government negotiates and enters into petroleum contracts with MNOCS. Such power to represent the government in contractual matters in respect of petroleum activities is derived from the NNPC Act. It stipulates that with effect from the day the Act comes into effect,

> "(a) all the rights, interests, obligations and liabilities of the Government existing immediately before the appointed day under any afore-mentioned contract or instrument, or at law or in equity, shall by virtue of this Decree be assigned to and vested in the Corporation, and
> (b) any such contract or instrument as is mentioned in sub-paragraph (a) above, shall be of same force and effect against or in favour of the Corporation and shall be enforceable as fully and effectively as if instead of the Government, the Corporation had been named therein or had been a party thereto."[35]

To assist in the handling of such contracts and negotiating any in the future, the NNPC has at its disposal scores of lawyers in its Legal Division who handle all corporate legal issues and provide legal services to the various arms of the Corporation. Also in this regard, the NNPC has a permanent Joint Venture Coordinating Committee in the NAPIMS (one of the three Divisions of the NNPC, which amongst other things, coordinates and manages the various petroleum contracts entered into between the Corporation and foreign oil companies. Most of these lawyers working for NNPC are quite knowledgeable in aspects of petroleum operations in general and also aware of the desired objective of the oil industry.

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35 Schedule 2 Section 8(3)(a)(b) NNPC Act 1977.

In the course of the author's field research, it was found that majority of these lawyers in addition to their legal training have undergone training in various renown Petroleum Institutes in the U.S., U.K., Canada, India and the former Soviet Union. For example, the General Manager, Legal Division of the NNPC in addition to possessing a postgraduate qualification in law, had worked for seven years with a Canadian Oil company before his appointment in Nigeria.

In an interview conducted by the author with the General Manager, Legal Division[36] he commented on several issues in response to questions put to him. When asked about the practice of making petroleum contracts in the Corporation and at what stage the legal Division is involved therein he stated that literally, the legal Division gets involved at all the stages, viz. from negotiation right through to the phase for contract of sale of the commodity. He averred that before any petroleum development agreement or any legislation in that regard is concluded, it is usual for the Board of Directors to seek for legal advice before or sometimes even at the negotiation table. Following the negotiation stage is the drafting stage. The drafting of the contracts is purely conducted by Nigerian legal practitioners in the Legal Division. The practice among the other parties to the contract (namely, the foreign oil companies) is to refer the draft copy of the contract to their legal counsel at their home offices abroad. It is

36 Interview with Mr. H.H. Olisa, General Manager, Legal Division, and Legal Adviser to NNPC in Lagos in November 1989, conducted as part the author's fieldwork research.

after the draft contract is returned with or without comments and where there is any, such comments resolved that it becomes an executed contract.

Olisa further made the point that internationally accepted legal concepts of oil and gas and practices have great influence on Nigeria in terms of drafting petroleum agreements. For example, he cited such concepts such as 'wild cat', 'undivided percentage interest', 'well head', 'blow-out', 'spud' and 'gas lift' among others and said they are commonly applied by legal draftsmen in the Nigerian Oil Industry through usage.[37] Many of these terms and concepts are said to have found their ways into the Nigerian Oil Industry through foreign personnel and agreements prepared by foreign legal practitioners (draftsmen), particularly in the U.K. and U.S.A., countries which Nigeria had her pioneer oil dealings with and where the oil industry has had a long history of legal development through legislation, transactions and litigation. As a result, most of the petroleum contracts and consultancy agreements in use in the Nigerian oil Industry are of foreign origins although adapted somehow to suit the Nigerian Government's desired objectives. Generally speaking, it can be argued that this is not an adverse thing. Just as the oil industry have become international in scope and operations, so also have major contracts for petroleum operations become internationalised in the sense that they are contracts commonly in use in the International Petroleum Industry

37 Interview information, Ibid.

adapted to suit domestic laws and circumstances. Thus, it is against this background that my analysis of the Nigerian petroleum contracts in the succeeding chapters is to be understood.

FORMS OF PETROLEUM CONTRACTS I: CONCESSION REGIMES AND JOINT VENTURES.

4.1 INTRODUCTION:

The early forms of petroleum development agreements in Nigeria were, firstly, the traditional concession system and afterward the participation or joint venture agreements. The concession agreements, as we will later see, were in due course perceived as being unfavourable and against the desired interests of the country, and as a result were revised and ultimately discontinued. But the joint venture agreements which replaced them till today form the bulk of the petroleum development arrangements in Nigeria. The aim of this chapter is to highlight the basic features of these early contracts in order to appreciate their role and import in striking a balance between the conflicting interests of the Nigerian Government on one hand and those of the MNOCs operating in the country on the other.

4.2 TRADITIONAL CONCESSION AGREEMENTS

4.2.1 NATURE OF CONCESSIONS.

Modern forms of petroleum contracts as known today started with the traditional concession system or as one writer calls them - 'the first generation agreements.'[1] The word concession has no clear legal connotation in many legal systems. In some countries the term is referred to as

1 See Page, A.C.,"Transnational Mining Contracts", in Horn, N. and C.M. Schmitthoff, The Transnational Law of International Commercial Transactions. Vol.2 Studies in Transnational Economic Law. Kluwer 1982 pp223-238. He further describes the Joint venture agreements as second generation and the Production Sharing and Risk Service contracts as third generation agreements respectively.

administrative contracts[2] and in others, such as the Common Law jurisdictions, a concession may take the form of a grant, a licence or a lease or even sometimes all three. As a result, in the mineral resource industry today, 'concession' is an all-embracing term, covering any agreement between the government and an investor (MNOC) for exploration and production of mineral resources. But this is far from its traditional meaning.

A number of scholars have attempted definitions of concessions in the traditional sense. According to William and Meyers a concession is :

> "an agreement (usually from a host government) permitting a foreign petroleum company to prospect for and produce oil in the area subject to the agreement. The terms ordinarily include a time limitation and a provision for royalty to be paid to the government."[3]

Similarly, Lipton described it as:

> "..a grant of a property right in minerals, usually for a very long period; 99 years was by no means unusual. The investor had an almost complete property right in the minerals in the ground, that is to say all the interest but the bare legal title."[4]

To yet another writer, Fischer, concession simply is :

> "..a synallagmatic act by which a state transfers the exercise of rights or functions proper to itself to a private person, state-owned enterprise or a consortium which, in turn, participates in the performance of public functions and thus gains a privileged position

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2 Under the French Civil Law system concession agreements are classified as administrative contracts - i.e."Contracts administratifs." For further details on this see Toriguian, S.,Legal Aspects of Oil Concessions in the Middle East, Hamashaine Press Beirut, Lebanon.1972 pp18-24.

3 See William, H.R. and Meyers,C.J., "Oil and Gas terms." Matthew Bender and Co. New York, 1962 at p.150.

4 Lipton, C.J., "Negotiation and drafting of Mining Development Agreements" An Inter-Regional workshop arranged by the U.N. Buenos Aires, Mining Journal Books Ltd. London 1986 at p. 92.

> vis-a-vis other private subjects within the jurisdiction of the state concerned."[5]

In the light of the above definitions, it may be discerned that the traditional concession agreement was a relatively simple document, the main provisions of which were an outright grant of the rights to exploit and market minerals recovered within the area of concession by a Sovereign in return for which the concessionaire provided the necessary capital, know-how and bore the risk of exploration. The concession area was usually very large and if it did not include the whole territory of the conceding state, it covered its largest part. Contrasted with today's standards, the duration too was long and usually ranged between 30 to 99 years.[6] The principal financial feature of the old concession was the royalty payment. Judged by today's values also, these early royalty payments were modest in size, but as time went on and competition for concessions became keener, the amounts increased. In many cases the companies paid a nominal rent of say £150 for a whole concession, plus one or two bottles of rum.[7] There was no royalty in the modern sense, that is, the concessions provided for a royalty calculated as a flat rate per ton of oil rather than as a percentage of the value of the sale price of production. On the average, the royalty was generally fixed

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5 Fischer, P.,"Concessions." in R. Bernhardt (ed), Encyclopedia of Public International Law, Vol.8 1985 at p.100.

6 A few examples of the vastness and duration of the traditional concessions merit a mention. (1) The concession to Standard Oil Company of California in Iraq was made in 1925. Its area covered the whole of Iraq excluding the province of Basra. The duration was for 75 years. (2) In the concession to Anglo-Persian Oil Company in Qatar in 1935, the area extended to the whole country while the duration was for 77 years.

7 Asante, S.K.B., "Restructuring Transnational Mineral Agreements." A.J.I.L. Vol.73 1979 p.339.

at four shillings gold or three rupees per ton of crude oil. The value of four shillings gold at the time was equivalent to U.S.$1.65.[8] In sum, under the traditional concession regime the foreign investor was assured and displayed all the incidents of ownership of the extracted minerals.[9]
The first effective petroleum concession that led to the first discovery of oil was that granted to Colonel Edwin Drake in July 1859 at Titusville, Pennsylvania, U.S.A.[10] The agreement, brief and superficial as it was, gave Drake the rights "to bore, dig, mine, search and obtain oil and take all, remove and sell such, for his own exclusive use and benefit, for the term of 15 years, with the privilege of renewal for same term."[11] At the turn of the century, about 1901, Iran, Saudi Arabia, Kuwait and Bahrain granted similar arrangements to William Knox D'Arcy which became known as D'Arcy Concessions.[12] Nigeria's earliest concessionaire was a German Bitumen company in 1908. The discussion on concession agreement regimes in Nigeria will follow shortly. All the early concessions, like the modernised ones of today, represent an important source of law which serves to

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8 This information is owed to Cattan,H. The Evolution of Oil Concessions in the Middle East and North Africa. 1967 Oceana Publications, New York, pp.5-25 and E.E. Smith and J.S. Dzienkowski, "A fifty-year perspective on world petroleum arrangements" Texas International Law Journal, Vol 24 1989, pp.18-19..

9 For fuller account on the fiscal regime of concessions in general see Cameron, P.D., "The Structure of Petroleum Agreements", in N.Beredjick and T. Walde (eds), Petroleum Investment Policies in Developing Countries. Graham & trotman London 1988, chapter3 and Fritzsche and Stockmayer, Mining agreements in developing Countries - Issues of Finance and taxation" 1978 2 Natural Resources Forum 220.

10 See Blinn et al (eds), International Petroleum agreements. Euromoney Publications, 1987 p.40.

11 Pennsylvania Rock Oil Company Vs. Bowditch & E.L.Drake dated December, 30 1857.

12 For an incisive account on the concession regimes in these countries see, Cattan, H., The evolution of oil concessions in the Middle East. London 1978 , and by the same author, The Law of Oil Concessions in the Middle East and North Africa. Oceana Publications New York 1967. See also K. Hossain, Law and policy in petroleum Development.Nichols Publications Co New York, 1979.

define the legal relationship between the host countries and the foreign investors. But recently most countries with the exception of Abu Dhabi[13] prefer to use the term covenant, licence, grant or lease in place of the word 'concession'. The objection to the term 'concession' may be connected with the fact that it suggests a one-sided relationship implying a unilateral grant by the state to the concessionaire, without expressing the rights and obligations of both parties to the agreement. It will be recollected that such was the case under the traditional concession agreements. As times changed and investors were made subject to income taxes as the host countries too became increasingly versed in the mining operations the use of the term concession was not only dropped but its terms were revised. The revised concessions, (as we will also notice below, in the case of Nigeria) are for shorter periods and envisage substantially increased benefits for the host country, usually in the form a increased revenue through a combination of royalties and taxation. In addition, they contain numerous sophisticated terms and conditions governing the mining operations, expenditures to be incurred and other developmental goals with the supervision and enforcement of these obligations by the host countries. As again intimated before, in this revised form the concession continues to be used in many countries (mostly using different terms) in combination with

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13 Abu Dhabi still uses the word concession in her petroleum development arrangements. See "Abu Dhabi Concessions 1981" in Barrows, International trends and latest changes in oil and gas laws, concession and production sharing agreements worldwide, 1983 Institutions on International Oil and Gas Law at A-1 and A-14.

some subsidiary petroleum legislations and also contracts as the legal regime applicable to petroleum activities.

4.2.2 MERITS AND DEMERITS OF TRADITIONAL CONCESSIONS.

On examination of the general features of the traditional concessions it is evident that there are certain merits and demerits that go with their application. We begin by highlighting the pros and cons of the system from the host country's or mineral owner's position.

For the host country, the early concessions meant simplicity. As seen above, these agreements were characterised by their simplicity and similarity. The grant made to the concessionaire was usually an exclusive right to exploit the mineral resource with minimum administrative and supervisory requirements. This invariably meant too that there were few ceremonies such as negotiations or bargaining under such agreements. This is hardly surprising because a good many of these old concessions were granted either by traditional rulers or colonial administrations.[14] The investors, who at the time were comprised of the "majors", were assured that government would not interfere with what they termed "management prerogatives."[15] It was for the investors alone to determine how the minerals would be mined, at what rate; the extent to which they would be processed in the host country, if at all; where they would be sold, on what terms, conditions and prices, etc. Indeed,

14 For example the first Nigerian concession agreement with Shell D'Arcy Company in 1937 was signed by the then Governor General of Nigeria on behalf of the Colonial Government of Nigeria.

15 Roland, B., "Choice of Law Provisions in Concession and Related Contracts", M.L.R. 1976 pp.625-627.

the investors had complete discretion unhampered by any view that government had an interest or concern in these basic decisions. In fact, however, it could be argued that this was as a result of the law and the regulations of the host country not being sufficiently developed into a system to regulate the mining industry. It also goes without saying that at the time the host country lacked the wherewithal and knowledge of petroleum operations to be able to influence any decisions of the investors. Hence, in this regard, one author remarked that,

> "Concessions were the product of global environment in which seven or eight vertically integrated major international oil companies, operating in an oligopolistic world petroleum market, dominated the international petroleum industry. In negotiating with governments their bargaining power (often backed by their home countries) was as strong as that of the host governments was weak. Governments had no option but to grant concession to the majors, on their terms."[16]

Furthermore, under concessions, the host country exercised little or no control, or participation in the activities of the industry. Unlike today, the role of the government then was passive. In turn, the investor provided all the capital not only for the mining project, but for the infrastructure as well. Having contributed all of the capital, the concessionaire expected to receive all of the profit. Probably, this explains why the host country received a proportionately smaller income as rent as it contributed nothing and bore no risk throughout the production stages.

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16 As per Hossain, K.,Law and Policy in Petroleum Development.Nichols Publication, New York 1979.at p.57. See also Smith and Wells, Negotiating Third World Mineral Agreements. Ballinger Publication, 1975. Chapter I.

Again in this regard, one author adduced the following perspective on the concession system;

> "It is not the legal system *per se* which made for the terms of the early concessions, but the then prevailing general circumstances. In those days, concessions were granted by Sovereigns with sometimes little authority, often under foreign political dominance. Also, the countries concerned were backward, sometimes nomadic, and in no case possessed a legal framework liable to govern such things as petroleum operations. Therefore, in order to fill that void, concessions were not only tilted in favour of multinational oil corporations but also written in such a way that constituted self-sufficient charters for those areas of the world where there existed no infrastructure of any kind, nor any government control or capabilities of any sort. Hence, it is hardly surprising that the word "concession" became mentally associated with "underdevelopment" and "political dominance"; this explains, from a psychological stand-point, the hostility shown toward this type of agreements."[17]

While the above may present a case for the benefits and drawbacks of concessions for the host country, this arrangement carried with it certain costs and benefits for the investor company as well. To the investor, the early concessions too meant simplicity and certainty. This is because during the old concession era, it may generally be assumed that the investors treated questions such as what terms or regulations, and at what rate or prices should minerals be mined and disposed of as a matter of convenience rather than substance. Since these investors are usually incorporated in or controlled from, their home countries, which in most cases the home countries are the seats of the colonial governments of the host countries, there was

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17 Statement by El-Kosheri quoted from Blinn, K.et al International petroleum agreements, op.cit. at pp.60-61.

generally no cause for them to fear any regulatory measure or policy directives that would be against their interests.[18]

From this, it follows that in terms of management and by any financial yardstick, the investors enjoyed maximum freedom to proceed in the best way to gain the optimum returns with minimum constraints and interference. Further, this meant too that all the risks lay with the investor. This included risks such as dependence upon the investor's finance, technology and overall policy decisions affecting the industry.

On the whole, it is apparent that the host governments were unfairly treated under these agreements. The principal disadvantage has been that it has given the host government less direct involvement and "say" in the management of petroleum operations, and less opportunity to enter into operations directly for such vital objectives as training of nationals and understanding of the international energy industry which is vital to government policy matters. Likewise the governments intake from oil proceeds under this agreement was meagre and inconsequential. The royalty system applicable then lacked the flexibility to accommodate rising or falling prices of oil of the present times through the medium of taxation. Many kinds of financial obligations which may generally be classified as taxation,[19] which are

18 For a detailed text see Walde, T., "Transnational Investment in the Natural Resources Industries",1979 11 Law and Pol.in Int'l.Bus.703 and Schanze, "Mining Agreements in Developing Countries",1978 J.W.T.L.140.

19 They include such fiscal regimes as Petroleum Profit Tax, Posted Prices, Signature bonuses, Customs and Excise Duties, Harbour and Terminal dues, among others.

applied today by oil producing states in contractual agreements with MNOCs were not applicable under concession agreements. This view also finds support in the writings of scholars such as Asante[20] and Zakariya.[21] Asante for instance, posits that the new forms of agreement, like production sharing contracts, are 'formally structured to dismantle the enclave status enjoyed by the transnational corporation in the concession and to reassert in unqualified terms the sovereignty of the host state over its natural resources.'[22] At this point, we will turn and focus our attention on the concession regimes in Nigeria.

4.2.3 NIGERIAN CONCESSIONS REGIMES.

After unsuccessful attempts by the first Nigerian Concessionaire - the German Bitumen Company in 1908 to prospect for oil in the then British protectorate at Lagos, a consortium of Shell D'Arcy Petroleum Company and British Petroleum Company (Shell-B.P.) acquired the second oil concession from the British colonial government in 1937.[23] In the course of research by the author in this area, no detailed account was got about the terms of the first Nigerian concession agreement except the fact that the Bitumen Company carried out surveys and exploration unsuccessfully for oil until the outbreak of the World War 1

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20 Asante, Restructuring Transnational Minerals Agreements op.cit.

21 Zakariya, H.S., "New Directions in the Search for and Development of Petroleum Resources in the Developing Countries" Vanderbilt Journal of Transnational Law, 1976 Vol.9,pp.554-576.

22 Asante op.cit. at p.359.

23 'Search for Oil', in Nigerian Trade Journal, Vol.3 No.3, July/September 1954, p.13 See also The Story of Oil in Nigeria, Shell-BP Petroleum Development Company of Nigeria Ltd, Alperton, Wembly Middlesex, 1960,p.5.

when it abandoned the search. However, the terms of the second concession granted to Shell-B.P. stated that it was for a period of thirty and forty years for on-shore and off-shore areas (with an option for renewal for another thirty and forty years), covering the whole mainland of Nigeria, which comprised of 357,000 sq.ml (925,000 sq.kl.).[24] The area of the concession was that large even though geological survey of the country at the time showed that the most favourable oil-yielding areas lay in the region of the Southern Nigeria sedimentary basin.[25] The concession lasted until 1959 when the duration was reduced to twenty years and the area narrowed down to 40,000 sq.ml.(103,600 sq.kl.) around the Niger Delta basin. These early efforts involved a lot of hardships which required great perseverance and expenditure. That was as a result of intensive activities in the search in areas with unfavourable physical conditions and a rather unsophisticated infrastructure. World War II also interrupted the search for five years but exploration resumed after the war until oil was found in commercial quantity in 1956. Following Shell-BP's success story in discovering oil, other MNOCs were attracted to prospect for oil in Nigeria. Up until 1960, Shell-B.P. had complete monopoly to select at their leisure any concession area they were granted to prospect for oil. Such monopolistic position which it enjoyed throughout these two decades with respect

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24 The Concession Document of the Nigerian Government with Shell-BP 1937 cited in Schatzl,H.L. Petroleum in Nigeria. 1969 Ibadan Univ.Press p.1. The concession was governed by the old Colonial Mineral Ordinances Act, No.17, of 1914.

25 See Reyment, R.A., Aspects of Geology of Nigeria, Ibadan Univ. Press, 1964 cited in L.H. Schatzl, Petroleum in Nigeria. op.cit. p.3.

to oil concession agreements has afforded Shell-B.P. both now and in the future a position of dominance in the development of the Nigerian petroleum resources. For instance, at present, Shell Petroleum Development Company of Nigeria, as the company is known today produces about 56 per cent of the total oil production of the country.[26]

The other oil companies were able to obtain concessions only after 1959 in those areas Shell-B.P. had earlier abandoned. By 1st April, 1966, out of the entire concession areas in the country, Shell-BP had acquired nearly 19,000 sq.ml. and Gulf Oil had only 6,855 sq.ml. Esso and SAFRAP possessed more than two-thirds of the areas with 59,000 and 25,000 sq.ml. respectively. The concessions granted to these companies were at the time governed by the Minerals Oil Ordinances No.17, 1914. The duration of the concession was for twenty years. And the fiscal terms comprised of payments of some yearly rent in respect of the whole duration plus royalties. With regard to the yearly rent, Paragraph 3(1) of the concession agreement granted to Shell-BP in 1949 stipulates that;

"The Licensee shall pay to the Accountant General of the Federation of Nigeria on behalf of the Governor General during the term hereby granted or any renewal thereof for each square mile or part thereof comprised in the said lands a certain yearly rent as follows:
(a) in respect of each year of the said term the certain rent of five shillings;
(b) in respect of each year of a renewal of the said term the certain rent of ten shillings."

While Paragraph 5 of the agreement which addressed the royalty payments states that;

26 See Understanding the Nigerian Oil Industry. An NNPC Publication 1988, at p.25.

"The licensee shall pay to the Accountant General of the Federation of Nigeria on behalf of the Governor General within two months after the end of each year of the term hereby granted or any renewal thereof the royalties hereunder specified:
(1) a royalty of four shillings a ton of 2,240 lbs. of all crude oil won and saved and casinghead petroleum spirit recovered by the licensee from the said lands within such year ascertained in the manner provided by Clause 6 (measurement of petroleum obtained from the said lands.)"

These early concessions granted to oil companies in Nigeria were called 'Exploration Rights' under the Mineral Oil Ordinances of 1914. In order to commence exploration, production or marketing activities, the oil companies needed to obtain such rights at first from the British colonial government and after independence from the Nigerian government. In a sense, they were the legal prerequisite for the companies before any prospecting work began. The Minerals Oil Ordinance continued to operate even after the country's independence until in 1969 when it was repealed and replaced by the Petroleum Act 1969 and its subsidiary legislation the Petroleum (Drilling and Production) Regulations 1969.[27]

The promulgation of this Act marked a watershed in the history of crude oil legislation in Nigeria. Its significance is that it, among other things, provided for the first time that the entire ownership and control of all petroleum in the country is vested in the Federal Government of Nigeria. As alluded to earlier, it also revised all the terms and conditions under which pre-1969 concessions were granted and indeed repealed in whole the Mineral Oils

27 Petroleum Act, 1969 No.51 of 1969.

Ordinances of 1914. The revised concession agreements are looked at in the next section.

4.2.4 MODERNISED TYPES OF CONCESSIONS

One of the fundamental changes introduced by the Petroleum Act 1969 is that as opposed to a single grant (Exploration right) as obtained under the traditional concession regime, it provides for three types of grants to regulate petroleum operations in the country. They include:

(1) Oil exploration licence (OEL),

(2) Oil prospecting licence (OPL) and

(3) Oil mining lease (OML).

Next, we will briefly discuss the nature and content of these grants in turn.

4.2.5 OIL EXPLORATION LICENCE.

This licence is granted by the Minister of Petroleum under the powers conferred by Section 2(1)(a) of the Petroleum Act 1969 only in respect of areas which have never been explored before. It entitles the licensee to the non-exclusive right to carry out geological and geophysical search for petroleum within the area of the grant. The size of the area applied for must be compact and may not exceed 5,000 sq.ml. (12,950 sq.kl). The duration of an OEL is for one year only, with a possible extension for another year. Any discovery of hydrocarbon or other minerals by the licensee must be reported to the Head of the Petroleum Inspectorate of NNPC and this may be accompanied by an application for either an oil prospecting licence or oil mining lease in respect of the same area or areas. And whenever the OEL expires, an oil company can apply to the Minister to convert it into an oil prospecting licence or oil mining lease for the areas it finds to be promising.

4.2.6 OIL PROSPECTING LICENCE

As with the OEL, this licence is granted by the Minister of Petroleum on application by an oil company. An OPL grants to the licensee the exclusive right to search, drill, to extract samples, as well as to export the crude oil, and to refine it in Nigeria. The duration of an OPL is left at the discretion of the Minister but must not exceed 5 years including any periods of renewal in the case of land and territorial waters and 7 years for continental shelf areas. The maximum area prescribed for an OPL is 1,000 sq.ml. (2,590 sq.kl.)

As soon as the licensees undertake crude oil or gas production in the areas of grant, they are obliged to pay royalties and are also subject to pay taxation as governed by the Petroleum Profits Tax Act (PPT Act) 1959. The intention of the PPT Act 1959 was to "impose a tax upon the profits from the winning of petroleum in Nigeria, to provide for the assessment and collection thereof and for purposes connected therewith".[28] The Act among other things, introduced the 50:50 profit share between the Licensees and Nigeria. In other words, royalties were collected separately from the 50 per cent tax due to the Government. There are other rights, duties and obligations of licensees under an OPL which are similar to those of an OML. For convenience and to avoid repetition, such rights, duties and obligations

28 Preamble to the PPT Act 1959. Since its enactment the PPT Act has been amended several times. Currently, the percentage of the profit paid to Nigeria by the oil companies under the Act stands at 85 per cent.

are addressed in the succeeding section which deals with the OML.

4.2.7 OIL MINING LEASE.

Juridically, a 'lease' denotes an agreement which gives rise to the relationship of landlord and tenant or lessor and lessee in respect of real or personal property respectively. Hence, as compared to a licence, a lease is of a more formal nature and rights conferred thereunder are greater and more enduring. For example, the terms of the lease would usually provide for the tenant or lessee to have exclusive possession of lands or tenements for a fixed or determinable period of time in return for some consideration to the landlord or lessor.[29] An OML granted under the Petroleum Act 1969 not only has the foregoing contractual qualities but also does contain some provisions which relate to the lessee's operations. However, it is stated that unlike a normal lease, an OML granted under the Petroleum Act even though designated a 'lease' does not grant to the lessee a leasehold estate.[30] That means, it is more in the nature of a mineral lease which permits the lessee the use of the land to explore and dispose of any petroleum discovered within the leased area for a definite time upon the payment of royalty among other considerations, and does not involve an estate in land *per se*.

The Petroleum Act 1969 also requires applicants for an OML to file their applications with the Minister of Petroleum.

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29 See Williams and Mayers op.cit. Para.201, pp.19-37.

30 For a more incisive account on this see Olisa, M.M. Nigerian Petroleum Law and Practice, Fountain Books Ibadan.1987, at pp.24-30.

The grant is made only to a holder of an OPL who has discovered oil in commercial quantities. A holder of an OML, in addition to having virtually all other rights of a licensee of an OPL, has

> "the exclusive right within the leased area to conduct exploration and prospecting operations and to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the leased area."[31]

Holders of the OML are also obliged as soon as production work commences to payment of rents, royalties as well as taxation in accordance with the Petroleum Profits Tax Act 1959. The area involved in the grant of an OML must not exceed 1295 sq.km. And the maximum duration of an OML is 20 years, but it may be renewed upon approval by the Minister. The renewal may either be for the entire area of grant or for part thereof. The Petroleum Act does not set out distinctions between the duration of a grant of the OML in respect of on-shore and off-shore areas as it is the case with the pre-1969 grants. It will be recalled that the position under the pre-1969 grants was such that, the duration of a grant in an on-shore area was for a term of 30 years, while with respect to that for off-shore area, a term of 40 years was stipulated. It has been rightly observed that the reason for this difference in duration, is that there existed in the pre-1960s during the old concessions period less advanced state of technology for exploiting off-shore areas as compared to the higher technology available from the 1970s onwards for on-shore petroleum

31 Paragraph 11 of Schedule 1 to the Petroleum Act 1969.

exploitation.[32] In addition, the Petroleum Act does not permit of the renewals of the OML for 30 years and 40 years as they relate to on-shore and off-shore areas as was the case under the pre-1969 grants. Instead, it is silent on the number of years to which a lessee would be entitled on renewal.

4.2.8 RIGHTS, DUTIES AND OBLIGATIONS OF OPL AND OML HOLDERS.

For purposes of carrying out their operations, holders of the OPL and OML are given certain ancillary rights, duties and obligations set out in the Petroleum Act 1969. These rights, duties and obligations conferred on the licensee and lessee are again subject to certain reservations and restrictions in the same manner any grantor of an interest in land may impose conditions on the use or alienation of the land. Some of these rights include, for example, surface rights (right to enter and remain in the licensed or leased area for purpose of operations permitted by the grantor) and water rights (right to take and make use of water found in the area). These rights, among others, are conferred on the holders of the licence or lease subject to the condition that the Government would not nationalise their assets and their entire investments in the venture without fair and adequate compensation.[33]

Furthermore, holders of both OPL and OML are under obligations relating to the level and standard of work to be

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32 See Etikerentse, G., Nigerian Petroleum Law 1985, Macmillan Publishers, Chapter 2 at p.35.

33 On the issue of payment of compensation by host countries to MNOCs following a nationalisation move by the former see generally Higgins, R.,"The taking of property by the State: Recent Licences," Hague Academy Recueil des Cours 1982 Vol.3, 298.

performed within specified periods. Others relate to obligations to recruit and train Nigerian citizens in all phases of the industry, to conserve petroleum and to control pollution of land, water and air. Work obligations are designed to provide efficient operation within the entire area of the grant. And in relation to recruitment and training of nationals, the Petroleum Act prescribes for the lessee the percentages of skilled and unskilled Nigerian personnel which it must recruit and train as follows:

The holder of an OML shall ensure that:

"(1) the number of citizens of Nigeria employed by him in connection with the lease in managerial, professional and supervisory grades shall reach at least seventy-five per cent of the total number of persons employed by him in those grades, and
(2) the number of citizens of Nigeria in any one such grade shall be not less than 60 per cent of the total and,
(3) all skilled and semi-skilled and unskilled workers are citizens of Nigeria".[34]

It is pertinent to stress also that the Petroleum Act embodies for the first time conditions under which grants of both an OPL and OML can be assigned or revoked. If the holder of an OPL or OML desires to assign the licence or lease, it must take place subject to the approval of an application to that effect submitted to the Petroleum Minister. For the Minister's consent to be given, the proposed assignee must be of good reputation. If the assignee is a new entrant into the Nigerian Oil Industry, it has to satisfy essentially the same conditions and requirements of a new applicant for a grant of petroleum

34 Paragraph 37 of Schedule 1 to the Petroleum Act 1969. It is pertinent to note that the emphasis placed here by the Nigerian Government is rather on employment of many Nigerians in the oil industry than on transfer of technology which came into focus later on.

rights from the point of view of technical competence, financial capability and Government's policy on foreign investments.[35] Turning to the issue of revocation, the Petroleum Act is explicit on the conditions under which an OPL or OML can be revoked. There are two instances in which revocation of a grant, be it an OPL or OML can occur.

(1) When the licensee or lessee becomes controlled directly or indirectly by shareholders who are nationals of a country whose laws prohibit Nigerian citizens or companies from participating in such country's petroleum related businesses under conditions that are comparable to those applicable in Nigeria.[36]

(2) When a holder of a grant fails to conduct operations continuously and vigorously in a business-like manner and in accordance with good oil-field practice.[37] In this regard, the question has been asked whether the Nigerian Government or NNPC can revoke a lease on the ground that an operator or lessee has reduced its production or pace of activities because of its inability to dispose of its production due to either oil glut or reduced demand for oil in the world. In Etikerentse's opinion, which is also shared by the author, it would be wrong and inappropriate under this provision to invoke the powers of revocation if indeed the lessee's action or reduced activity is solely brought about by

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35 For a survey of the law and policy of the Nigerian Government on foreign investments in general, see Osunbor,O.A., "Laws and policy on the registration of technology transaction in Nigeria", 12 JWTL 1987 p.125.

36 Paragraph 23(1) of Schedule 1 to the Petroleum Act 1969.

37 Paragraph 24 (1) (4) schedule1 to the Petroleum Act 1969.

dictates of market forces and not by any deliberate malevolent act.

Finally, as regards which arbitration law will apply in the event of any dispute arising, Section 10 of the Petroleum Act stipulates that such disputes shall be settled in accordance with the Arbitration Law of any state in Nigeria mutually agreed to by the parties. Where the parties fail to reach such agreement the Arbitration Law of Lagos State shall be applied. The Petroleum Act does not stipulate specifically which law will be applicable for the construction of the terms and provisions of the OPLs and OMLs, but being the major legislation on oil mining operations in Nigeria, it goes without saying that the applicable law too will be Nigerian law.

4.2.9 THE END OF THE CONCESSION ERA.

The major impetus towards dismantling the concessions regime in Nigeria was largely motivated by the country's desire for participation in the development of its hydrocarbon resources with the foreign oil companies. It is clear from the above examination of the traditional and modernised concessions in Nigeria that, the role of the government under both was purely regulatory and non-participatory. This, as we again noticed was because the country lacked the financial, technical, manpower and marketing capabilities required for the exploitation of the resource. But following its membership of OPEC in 1971 and the formation of the NNOC in the same year, things began to change. Nigeria, along with other OPEC member countries, at the time, sought to actively participate in and eventually exercise control over their oil industries, including development, exploitation and marketing in order to make the best possible use of these resources. At its XVI Conference of January 1968, OPEC passed Resolution No.90 which embodied a policy statement calling for modification in the concession system or arrangements between member states and oil companies. The policy statement, inter alia, mentioned that,

> "Where provision for governmental participation in the ownership of the concession holding company under any of the present contracts has not been made, the government may acquire a reasonable participation, on the grounds of the principle of changing circumstances. If such provision has actually been made, but avoided by the operators concerned, the rate provided for shall serve as a minimum basis for the participation to be acquired."[38]

This principle was re-emphasised by the OPEC in 1971 when it resolved that member countries shall take immediate steps towards the effective implementation of the principle of participation in the existing oil concessions. Infact, the resolution prescribed a guide-line for the level of participation. The guide-line was a minimum of 25 per cent participation by 1973 and a maximum of 51 per cent by 1982.[39]

In the same vein, this desire to change from the concessions type of agreement to participation and the need for increased control, had been re-emphasised and supported by the United Nations (U.N.) when, through many resolutions, it accentuated the importance of permanent sovereignty as the

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38 See Adedeji, K., "State participation in the Nigerian Petroleum Industry", 11 JWTL 1977 at p.374.

39 OPEC Resolution No.192 of 1971.

right of peoples and nations to determine freely the use of their natural resources.[40] Legally, the significance of these resolutions is that they recognised and supported the aspirations of many LDCs to adopt legislation governing the allocation, use, disposal, development and distribution of their natural resources, this being an indisputable function of state sovereignty.[41] The question of permanent sovereignty over natural resources, which for the first time came up in 1950s, is inextricably linked with the history of colonialism and neo-colonialism. Historically and politically, it was the demand of the newly independent countries for economic self-determination once political independence had been achieved. It stemmed from the recognition of these countries that political independence was bound to remain meaningless if foreign control were to last in the economic sector, more so since for most LDCs their natural resources generally represented their only economic assets. Hence, it is no surprise that the issue of permanent sovereignty has become and continues to be a bone of contention between developed and LDCs in all international forums. Kemper has succinctly put it that,

> "the history of the concept permanent sovereignty can be seen as the history of the struggle between private foreign investment and the interests of the capital-exporting countries on the one side and the interests of the capital-importing countries and their

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40 They include, G.A. Res. 523 (VI) 1952, 626 (VII) 1952, 837 (IX) 1954 and 1803 (XVII) 1968, the latter is called "Declaration on Permanent Sovereignty over Natural Resources." This resolution is the last substantive resolution on the subject.

41 Kemper,R. "The Concept of Permanent Sovereignty and its Impact on Mineral Contracts." Legal and Institutional Arrangements in Minerals Development. Mining Journal Books 1982 U.N. D.T.C.D. Cap.4 at p.30. See also S.Zorn, "Permanent Sovereignty over Natural Resources" Natural Resources Forum 1983 Vol.7, No.4, at pp.321-328.

economic and development goals on the other side."[42]

Leaving these arguments and controversies aside, the fact has to be acknowledged that the changes called for in the UN Resolutions clearly have been realised, sometimes with a certain time lag, sometimes in anticipation, in relation to the forms of contractual agreements of LDCs. In pursuance of these resolutions, LDCs including Nigeria, have affirmed that ownership of their natural resources is vested in them and have sought increased control over, and benefits from, their exploitation. These countries felt confident in taking steps that reversed the then concession agreements to forms of joint ventures (either with majority or minority participation), and later on to production sharing and risk service contracts. To get to that stage, these countries, by and large, chose a path of either outright expropriation or renegotiation. Some countries, such as Mexico, Iraq and Libya embarked on expropriation of assets of the foreign oil companies operating in their oil industries, whereas Nigeria (as will be seen shortly) took a moderate principle of acquiring equity interest in the operating oil companies through a renegotiation process. Several factors may explain the preference of renegotiation by Nigeria. The willingness of the "majors" to renegotiate the early concessions may be attributable to their fear that Nigeria and other countries would take the same step as Mexico and Libya. Other factors include, first, the formation of OPEC and its coordinate efforts to renegotiate the original concessions. Second, it

42 Kemper, R., "The Concept of Permanent Sovereignty and its Impact on Mineral Contracts." op.cit.at p.30.

became increasingly obvious that it was unfair to tie these countries' royalties and other benefits to prices of oil controlled by the MNOCs.[43] Finally, international political pressure (backed by the U.N.) and nationalism also contributed to Nigeria and the other oil producing countries to complain about the unfair nature of the early concessions.

Although several countries managed to renegotiate their concessions in 1950s and the 1960s, the major restructuring of the traditional concession arrangements occurred in the 1970s. While OPEC was assisting in the collective negotiation of improvements in the financial terms of the concessions, individual countries were negotiating various piecemeal changes in the structure of the arrangements. In 1971, the OPEC renegotiations resulted in an increase in the countries' share of income through additional income taxes and a new system for determining the posted price of oil other than that determined by the MNOCs.[44]

In the case of Nigeria, the final blow on MNOCs with regards the demise of concessions came in February 1972, through a Government Notice[45] which assigned to the erstwhile NNOC all areas in the country not covered by existing licences or leases, and also of concession areas being held by MNOCs which might be surrendered from time to time.[46] The Notice

43 This discussion draws on A. Danielsen, The Evolution of OPEC, op.cit. 1982, pp4-7.

44 Smith, E.E. et al "World Petroleum Arrangements," op.cit. pp.30-33.

45 Official Gazzette No 9 Vol.59 of February 1972, Government Notice No.311.

46 Paragraph 12 of Schedule 1 to the Petroleum Act, 1969 provides that ten years after the grant of an OML, one half of the area of the lease shall be relinquished. It is silent on whether or not such relinquishement shall take place when no exploration work is undertaken in the area of grant. The provision applies to all leases granted under the repealed Mineral Oils Ordinance and the Petroleum Act by virtue of

issued under the heading "Issue of Prospecting Licences" stated that:

> "All areas not covered by existing oil mining leases, oil prospecting licences or oil exploration licences have been vested by the Federal Military Government in the Nigerian National Oil Corporation. Concession areas surrendered from time to time under the laws regulating the exploitation of petroleum and gas deposits in Nigeria will be vested in the Nigerian National oil Corporation."[47]

The effect of the Notice is that since February 1972, no new OEL, OPL and OML has been granted to any person whether corporate or individual, foreign or indigenous, covering any part of the areas reserved for the corporation. This meant that no more concessions were to be granted to any companies or organisations. The question arises, whether such Notice is equivalent to an enactment or a recognised form of conveyance to effect the vesting of the mineral oils and gas in place in the NNOC. In view of section 40(3) of the Constitution of the Federal Republic of Nigeria which vests in the Government all natural resources within the lands under Nigerian jurisdiction, it would appear that the Notice could at best be regarded as statement of policy or Government decision whereby all uncommitted oil fields are treated as areas reserved for the exclusive exploitation by the state owned oil corporation. This is because, notwithstanding the Notice, all petroleum in place over which the Government has jurisdiction vests throughout in the Federal Government by virtue of the provisions in the

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Paragraph 1 of Schedule 4 of the Petroleum Act 1969. In my view, this provision is fraught with practical difficulties.

47 Ibid. at p.284.

Petroleum Act 1969,[48] Exclusive Economic Zone Act 1978[49] and Constitution of the Federal Republic of Nigeria 1979.[50]
However,the NNOC was instead authorised to employ private companies as contractors or minority partners and that it has been doing up to now even though under a new name - the NNPC. The effect is that in Nigeria today, apart from the modernised concessions which are converted and operate as joint ventures, two other contractual forms exist within the oil industry. These are the production sharing and risk service contracts which are discussed in chapter five.
It is worthwhile too to mention that the provisions under the Petroleum Act relating to the OEL, OPL and OML 1969 have neither been amended nor repealed, as such they are still in force.[51] Similarly, some of the licences granted under the pre 1969 concessions regime i.e. under the repealed Mineral Oils Ordinances of 1914 are still in force subject to the transitional and saving provisions of the Petroleum Act 1969 which stipulates that:

> "Any licence or lease granted under an enactment repealed by this Act shall continue in force notwithstanding the repeal, but shall be subject to this Decree and to any regulations made thereunder except as regards the duration of the licence or lease, the rent and royalties payable in respect thereof and any term or condition as to which the Minister certifies that the justice of the case required that the term or condition in question shall

48 Section 1 of the Petroleum Act 1969.

49 Section 1 of the Exclusive Economic Zone Act 1978.

50 Section 40(3) of the 1979 Constitution of Nigeria.

51 Interview information by the author with M.M.Olisa, NNPC Lagos.

> continue to be effective notwithstanding this Act.[52]

In effect, this means that some of the licences and leases granted to oil companies under both old and modernised concessions (pre 1969 and post 1969 grants), are still in operation. When Nigeria was renegotiating with these companies in relation to participation agreements, such original licences and leases served as the bases for such participation or joint ventures. It is reckoned that greater majority of the licences currently in force in Nigeria were granted under the Mineral Ordinances. Many of such licences granted for the initial 40 years term, have now had close to 35 years duration.[53] Therefore, companies who conduct petroleum operations through joint ventures or participation agreements with the NNPC in the areas in respect of both pre-1969 and post-1969 grants are obliged to carry out most of the work obligations and comply with most of the regulations and requirements of holders of OPLs and OMLs. The nature of the operations of joint ventures or participation agreements will now be examined.

4.3 PARTICIPATION AND JOINT VENTURE AGREEMENTS.

As indicated earlier, participation agreements as a new form of petroleum development arrangement was a response to the need felt by Nigeria and other oil exporting countries in the late 1960s and 1970s to share in the ownership and control over operations in their oil industries. Given that complete control exercised by the early concessionaires was

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52 See Petroleum Act 1969 Schedule 4 Parargraph 1 (a).

53 For example the Oil Mining Lease agreement signed in June 1959 between Shell-B.P.Petroleum Development Company of Nigeria and Nigeria as well as similar agreements with other oil companies will continue to be in force until 1999.

based on their ownership of petroleum under traditional concessions, state participation was, thus, perceived by these countries as a corollary to state ownership of petroleum deposits. Again, as independent states, they saw it as incongruous that they should not have the right to participate in the exploration of a resource which falls within their sovereign jurisdictions. Infact, the first case of state participation in the international petroleum operations dates back to 1914. In that year, the British Government, carrying out the petroleum policy recommended by Winston Churchill, acquired a controlling share interest (about 56 per cent) in Anglo-Persian Oil Company (now British Petroleum Company).[54] In the course of debate in the House of Commons in 1913, Churchill remarked:

> "Our ultimate policy is that the Admiralty should become the independent owner and producer of its own supplies of liquid fuel...or at any rate, the controller at the source of at least a proportion of the supply of national oil we require."[55]

Similarly, post World War II oil agreements in the Middle East envisaged an even more vigorous application of the principle. The majority of them provided for government equity participation in the form of either joint ventures or optional participation conditioned on the discovery of commercial petroleum deposits. The adoption by OPEC of Resolution 90 in 1968 which was pointed out earlier, added

54 For detailed text of how Britain acquired majority shares in the British Petroleum Company, see Shivadran, B., The Middle East Oil and the Great Powers, 2nd Edition, 1959

55 Statement of Former Prime Minister Winston Churchill to the British House of Commons, 17 July 1913, quoted in United States Federal Trade Commission,in The International Petroleum Cartel, Washington, D.C., 1958 at p.348.

succour to these countries in their resolve towards participation agreements.

Since then, state participation as a policy aimed at sharing ownership and control over exploitation of petroleum resources has been adopted by many countries. Thus, in many of the major oil producing countries today, aside from having ownership of the hydrocarbons wholly vested in the state, the state is also an operator as well as the regulating and administrative authority governing its relationship with MNOCs. In most cases, the state owned oil companies in these countries operate as instruments for achieving effective participation.

The basic objectives of state participation can be summarised as follows:

(a) satisfaction of the national aspiration of public participation as of right with the MNOCS in the ownership of petroleum rights and in decision making on important matters affecting the conduct of petroleum operations;

(b) increased revenue to Government through profit sharing and sales of Government share of crude oil produced from joint operations;

(c) acquisition of requisite technology, managerial and technical skill by the state owned oil company which participates in the operations;

(d) supply of internal needs of petroleum and its products, and

(e) inside knowledge of the methods, techniques and patterns of petroleum operations necessary for an effective Government regulation of the industry.[56]

Given these general objectives, it is proposed to examine below the various forms of participation agreements in the Nigerian context.

4.3.1 PARTICIPATION AGREEMENTS IN NIGERIA

As we saw earlier in chapter two, under Paragraph 34(a) of the Petroleum Act 1969, provision is made authorising the Nigerian Government to participate in all licences or leases granted since 1969, to explore and develop oil with the applicant for such licence or lease. The Act empowered the Federal Government to achieve participation in the oil industry by negotiations rather than through unilateral action. The Act sets out that;

> "If he (the Minister) considers it to be in the public interest, he may impose on a licence or lease to which this Schedule applies special terms and conditions not inconsistent with this Act including terms and conditions as to:
> (a) participation by the Federal Military Government in the venture to which the licensee or lessee relates, on terms to be negotiated between the Minister and the applicant for the licence or lease..."[57]

This is, for instance, in contrast with the position in Algeria where the Government enforced participation (i.e. through nationalisation) by transferring 51 per cent interest in assets, stocks and shares of the foreign oil

56 The discussion in this area draws extensively on Khan, K.I.F.(ed), Petroleum Resources and Development: Economic, Legal and Policy Issues for Developing Countries, 1987 Belhaven Press, London, especially in chapter 12.

57 Schedule 1, Paragraph 34(a) of the Petroleum Act 1969.

companies to the State Oil Company - SONATRACH.[58] The policy of participation through negotiation, is in my view more sensible compared to that through unilateral action because the former can generate a better atmosphere of mutual confidence between the parties than the latter.

Therefore, in 1970, in consonance with provision of the Petroleum Act 1969, and also motivated by OPEC's Resolution No.90 of 1968, the Nigerian Government announced its intention to participate in three branches of the petroleum industry, viz. exploration and mining, refining, and distribution and marketing. The detailed participation scheme received the necessary legislative approval in September 1971, with participation ratios ranging from 35 per cent government interest in SAFRAP (a French subsidiary) and Shell-BP, to 51 per cent in Japan Petroleum Company. The ratio of participation at the early stages was flexible, it depended on the outcome of the negotiations with each oil company and whether or not the company involved is a holder of an existing OPL or OML.

With effect from April 1973, Government participation at a level of 35 per cent was extended to other oil producing companies in the country, viz. Gulf, Mobil, Agip-Phillip Texaco and Pan Ocean. An additional 20 per cent interest was acquired with effect from April 1974, giving a total government participation of 55 per cent. This was followed by another acquisition of 5 per cent interest with effect from July, 1979, so that as from that date the NNPC, as a

58 By virtue of Algerian Ordinance No.17 &1-23 of 12 April 1971.

transferee on behalf of the Government owns a participating interest of 60 per cent in the operations and assets of all oil producing companies in Nigeria, except those companies that are parties with NNPC to service contracts or production sharing contracts.[59] (See Tables on Government Joint Venture Participation interest below).

The acquisition of interest just mentioned set the stage for government participation in the operations of oil companies in Nigeria. By acquiring such participating interests, Nigeria assumed the role of a partner in a joint venture and, among other things, had to contribute proportionately to the costs of carrying out the oil operations of each company, as well as collect its remunerations proportionately in kind, i.e., in crude oil.

The subject matters of participation by NNPC in the operations and assets of each oil producing company are as follows:

(a) the OPLs and OMLs held by the oil company,

(b) the fixed and moveable assets of the company in Nigeria including development, production, transportation, distribution and export operations and associated assets as offices, housing and welfare facilities, and

(c) the working capital applicable to the joint operations of the OPLs and OMLs.[60]

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59 All participation interests acquired by Government became vested in NNPC with effect from April, 1977. The discussion here draws mostly on Olisa op.cit., chapter 3 and Etikerentse op.cit., chapter 1 respectively.

60 See Article 1 of Participation Agreements between NNPC anf ELF Nigeria Ltd 1985, NNPC and Gulf Oil Company Nigeria Ltd 1984, NNPC and Shell Petroleum Development Company of Nigeria Ltd, 1984 and NNPC and the rest of the oil companies operating in Nigeria.

It is pertinent to emphasise here that NNPC does not own shares or stock in any of the MNOCs with which it has joint venture operations agreements. In other words, NNPC only has a non-equity participation agreement with these companies. This point is further discussed below.

Negotiations with the oil companies in respect of the acquisition of the participation interests was said to be by no means an easy task. In some cases, it took as long as two years for the NNOC and later on NNPC officials and the oil companies to reach an agreement. Compensation to the companies for the Government's acquired interests were at first settled on the basis of the updated book value of their assets. That is to say, on the normal commercial basis calculated by valuing the future earning value of the assets notwithstanding the depreciation and qualifying capital allowances they had previously claimed on such assets. But the companies later on gave up this formula for an assurance of oil supplies and an oil 'buy back' system.[61] For example, in the 1974 agreement for the 55 per cent participation interest provided that in that year the companies would have the right to buy back at agreed prices, half of the NNOC's participation crude and the first option to buy another one quarter. The remainder was to be sold in the world oil market by the NNOC. The practice of making available a proportion of oil to the companies to sell on behalf of the Nigerian Government finally ceased in 1978. From that year,

61 The information in this area is owed to an interview session with M.M.Olisa, NNPC Office Lagos.

NNPC began to market Nigeria's participation crude directly to buyers.

4.3.2 NATURE OF PARTICIPATION AGREEMENTS IN NIGERIA.

The major concern here is to examine the main features of the Nigerian approach to joint venture agreements, which consists of a partnership between NNPC and the MNOCs for the exploitation of petroleum resources. As indicated previously, this type of agreement represents a practical compromise which has emerged in the post World War II era to meet two basic needs, that of the host state to acquire ownership and exert greater control over its petroleum resources, and that of the MNOCs to act as operators as well as to secure their own crude supply.

The term 'joint venture' here is used in a broad sense to denote a variety of forms of cooperation. Its intended meaning is broad enough to accommodate all situations in which the host state and the MNOCs undertake such joint participation in any phase of the oil industry. Therefore, it is not limited to joint ventures in the technical sense of joint ownership and control.[62]

In Nigeria, there are two separate but related agreements which constitute joint participation in petroleum operations: the equity share participation and the non-equity participation agreements.

4.3.3 [A] THE EQUITY SHARE PARTICIPATION AGREEMENT

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62 For instance, in the case of Chishom V. Gilmer, 81 F.2d 120 at p.124 (4th Cir 1936) the term 'joint venture' was defined as "The relationship created when two or more persons combine in a joint business enterprise for their mutual benefit with the understanding that they are to share in the profits or losses and that each is to have a voice in its management." Thus, for our present purposes any joint business operation in which either the host state or the MNOC owns between 5 and 90 per cent participating interest is classified as joint ventures.

In Nigerian publications and usage it is commonly called 'participation agreement' and refers to the one in which the government is a shareholder in the joint venture company, and is entitled to dividends to the extent of its equity share interest in that company. This arrangement requires the formation of a separate legal entity in the form of a joint stock company by a MNOC and the Nigerian Government or its agency. The company so created is usually completely neutral of the parents, drawing equally or as may be agreed on from their resources, both human and material. Management board representation is based on parties' participation interests. Management is usually independent of direct influence by the partners who intervene only through representing their several interests at the Board level. The joint company usually has its own completely distinct image and outlook.

Most companies that fall within such classification of participation agreement in Nigeria, are the 'oil service companies' in which by virtue of the Nigerian Enterprises Promotion Act (NEP Act) 1977, the NNPC owns 36 per cent equity shares in each company while the Nigerian employees of such companies own 4 per cent of the share capital. The NEP Act also known as the 'Indigenisation Act' was enacted for the purpose of transferring proprietary interests in business organisations from foreign control to Nigerians. The Act classified all business enterprises in the private sector into three groups, each requiring a different percentage of Nigerian participation, namely 100, 60 and 40 per cent respectively. The oil service companies are among those businesses listed in Schedule 3 to the Act, in which Nigerians must have at least 40 per cent share ownership. There are as many as 55 oil service companies operating in Nigeria, of which about 13 are 100 per cent Nigerian owned firms. Examples of such oil service companies in which NNPC has 36 per cent share ownership and the remaining 4 per cent equity shares to make up the mandatory 40 per cent Nigerian participation is held by the employees of the companies include; Baroid of Nigeria Ltd, Baroid Drilling and Chemical Products Nigeria Ltd, Dresser Nigeria Ltd, Baker Nigeria Ltd, Keydrill Nigeria Ltd and Forex Company of Nigeria Ltd, to name but a few. These companies engage in all sorts of repairs and servicing jobs in the oil industry which range from construction works, electrical services, drilling, refining, surveying, data processing, tank building, driving services, etc.[63] See Table 4.1 below.

Further, by virtue of the same Act, the NNPC has equity share ownership of 60 per cent each in National Oil and Chemical Marketing Company Limited (Shell owns 40 per cent) and African Petroleum Limited. The African Petroleum Limited was initially 60 per cent equity owned by B.P.Company Limited and the NNPC owned the remaining 40 per cent. But following the nationalisation of B.P's interests in 1977 because of its involvement in the shipment of Nigerian oil to South Africa (which was against the Nigerian Government policy), Nigeria acquired all the 60 per cent owned by BP.[64]

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63 Interview data NNPC Lagos.

64 See Acquisition of Assets (British Petroleum Company Limited) Act 1977.No.20, Laws of the Federation of Nigeria.

As a result, currently the African Petroleum Company is 100 per cent owned by Nigeria, viz. 60 per cent owned by NNPC and 40 per cent by Nigerian private investors. Both companies (National Oil Chemical and Marketing Company and African Petroleum Company) are engaged in the business of marketing petroleum products. It is worthy of note that oil companies engaged in exploration and production operations are not mentioned in any of the provisions of the NEP Act 1977 in relation to equity holdings. There is a 'blanket provision' in Schedule 3 to the Act which states that "all other enterprises not included in Schedules 1 and 2 not being public sector enterprises are exempt from the provisions of the Act". As a result, the Government or its agency the NNPC owns no equity share but has only non-equity participation agreement with the oil exploration and production companies.

Mention must also be made of the most recent equity joint venture participation agreement between NNPC and Shell/Agip/Elf for purpose of gas liquefaction which led to the formation of a company called the Nigerian Liquefied Natural Gas Limited (NLNG). The company was incorporated in February 1990 as one of the new subsidiaries of the commercialised NNPC, with their respective shares being NNPC - 60 per cent, Shell - 20 per cent, Agip - 10 per cent and Elf - 10 per cent. Other subsidiaries in which NNPC has equity holdings are Hyson Ltd, Calson Bermuda Ltd and National Engineering and Technical Company Ltd (NETCO). Again see Table 4.1 below.

Generally speaking, the nature of the operations of these equity participation agreements are the same as those under non-equity participation agreements in that in both cases, NNPC acts an the non-operating partner except that it has a say in the management through its board representatives who see to it that Government's policies are duly carried out. Thus, one can say that the basic difference between the two lies in the fact that on the one side, the government has equity share holdings and on the other, it has only a participatory right to a share in the ownership and conduct of petroleum operations in accordance with its participating interest. Another point of difference lies in the fact that under the equity participation agreement a new corporate body is formed, whereas as it will be seen later, it is not usually the case under a non-equity participation arrangement. One writer simply differentiates the two by describing them as "Corporate Joint Ventures" to represent the equity participation agreement and "Unincorporated Joint Ventures" for non-equity participation agreements.[65] The main provisions of both types of agreements will be addressed below after the next section on non-equity participation agreements.

65 Herzfeld, E.O., Joint Ventures, Jordans & Sons.1983, p.8. Similarly, Zakariya differentiates between the two kinds of joint ventures by calling the equity joint venture- "the American model" and the non-equity joint venture- "the Italian model". For details on this, see Zakariya, H.S., "Sovereignty, state participation and the need to restructure the existing petroleum concession regime", Alberta Law Review, Vol.X p.231.

Table 4.1.

NNPC EQUITY PARTICIPATION STATUS

Name of company	Business Nature	Acquired Equity %
Schlumberger Ltd	Well survey	40
Forex Ltd	Drilling	36
Baroid Ltd	Mud Chemicals services	36
Dreeser Ltd.	Engineering Services	36
Solus SchallLtd	Driving Services	36
Baker Ltd	Equipment Marketing	35
NLNG Ltd	Gas liquefaction and sale	60
NETCO Ltd	Engineering consultancy	60
HYSON Ltd	Refinery services	60
CALSON BERMUDA	Oil marketing	51

Source: NNPC Office, Lagos, 1989.

4.3.4 [B] NON-EQUITY PARTICIPATION AGREEMENT.

Under this form of arrangement, also commonly referred to in Nigeria as 'joint operating agreement' (JOA), the government participates in the ownership and authorised operations and shares in kind in the crude oil and other products. That is to say that the Government does not own shares or stocks in the joint venture operator company and is not entitled to dividends from the company. There are many kinds of these arrangements. The most common of which is the formation of a working association between a MNOC and a host government or its agency without the creation of a new and separate company. Both parties agree to hold jointly all rights and interests under the joint venture agreement and meet expenses in proportion to their participation interests.

Furthermore, one of the parties, i.e. the MNOC, usually is designated the operator.[66]

This type of joint venture was first used by Algeria in 1968 when the state oil company - SONATRACH entered into an association with Getty Petroleum Company for the exploration and production of hydrocarbons. The said agreement described the association as "not a legal entity, partnership or a corporation but only the juxtaposition of participation and interest according to a percentage fixed at 51 per cent for SONATRACH and 49 per cent for Getty."[67] The management structure consisted of an Executive Council of four representatives of SONATRACH and three of Getty and operation is carried out by SONATRACH, with Getty to furnish technical assistance and qualified personnel, the cost to be borne by the association.[68] Juridically speaking, this kind of arrangement does not constitute either a partnership or a typical joint venture agreement. The usual elements of a typical joint venture, some of which are lacking under this arrangement are, (1) a common interest in the object of the undertaking; (2) an equal right to direct and govern the conduct of each other with respect thereto; (3) sharing of production; (4) shares in the losses, if any and (5) a close and even fiduciary relationship between the parties.[69]

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66 The writings on this aspect are vast. See generally, Herzfeld, E.O., Joint Ventures, Jordans Bristol, 1983; M.P.G.Taylor, T.P.Winsor and S.M.Tyne, The Joint Operating Agreement: Oil and Gas Law. Longman, 1989 and P.D. Cameron, "The Structure of Petroleum Agreements", in T.Walde and N. Beredjick (eds), Petroleum Investment policies in Developing Countries op.cit.

67 The agreement was governed by the Sahara Petroleum Code 1958. For a full text, see, OPEC Selected Documents 1968 pp 253-288 quoted in Barrows, G.H., Wordwide Concession Contracts and Petroleum legislation, Pennwell Publishing, Oklahoma, 1983 at p.263.

68 Ibid Article 18, Title 11.

69 Cameron, P.D., op.cit pp 42-46.

In Nigeria, this form of arrangement exists between NNPC and (1) Shell (2) Mobil (3) Gulf (4) Agip (5) Elf (6) Texaco and Chevron and (7) Pan Ocean Company. (See Table 4.2 which gives the percentage of NNPC's Non Equity Participation Interests in MNOCs operating in Nigeria).

Table 4.2

NNPC's NON-EQUITY PARTICIPATION INTERESTS IN MNOCs OPERATING IN NIGERIA.

COMPANY	% PARTICIPATION	DATE ACQUIRED	NUMBER OF OMLS/OPLS
SHELL/BP	35	1.4.1973	58
	55	1.4.1974	58
	60	1.4.1979	58
	80	1.8.1979	58
	60	1.7.1990	58
GULF	35	1.4.1973	10
	55	1.4.1974	16
	60	1.7.1979	16
TEXACO	55	1.5.1975	6
	60	1.7.1979	6
MOBIL	35	1.4.1973	4
	55	1.4.1974	4
	60	1.7.1979	4
ELF	35	1.4.1971	4
	55	1.4.1974	4
	60	1.7.1979	4
AGIP/PHILLIPS	3.3	1.4.1971	4
	55	1.4.1974	4
	60	1.4.1979	4
PAN OCEAN	55	1.1.1978	1
	60	1.7.1979	1

Source: NNPC Office, Lagos.

From Table 4.2, it is clear that the NNPC through its non-equity participation interests is a party to all JOAs in Nigeria. Each JOA embraces all the OMLs jointly owned by NNPC and the other parties to the agreements. For example, the joint development of the OPLs/OMLs jointly held by NNPC and Shell Company Limited is governed by one single operating agreement irrespective of the fact that the blocks under the licences and leases are variously located on-shore and off-shore. By design, all the terms of the operating agreements in Nigeria are uniform in substance, and as mentioned earlier are also similar to the terms of equity participation agreements. For instance, certain typical provisions common to both agreements which will be addressed in the next section include:

(1) appointment of an operator to carry out joint operations for the benefit of the parties;

(2) the rights, duties and obligations of the parties;

(3) contribution of funds to finance joint operations and the sharing of production from the joint operations;

(4) establishing of management board or operating committee of the joint operation, and

(5) fiscal measures.[70]

4.3.5 MAIN FEATURES OF JOINT PARTICIPATING AGREEMENTS IN NIGERIA.

What will concern us here is to look at the major features of the general theme running through the terms of the two kinds of participating agreements in Nigeria, regardless of the percentage of participation. While the specific terms and conditions of the agreements may vary somewhat from one another, the objectives of the parties are basically the same; i.e. Nigeria wants to participate in and take charge

70 These provisions are based on the contents of the various Participation Agreements between NNPC and each of the MNOCs operating in Nigeria.

of the exploitation of her hydrocarbons for the benefit of the country, while the MNOCs want to act as the operators in the ventures and ensure a steady supply of oil. The discussion is based principally on the terms of some of the Participation Agreements as well as practices and principles established since April, 1971, for the conduct of joint petroleum development operations in Nigeria. Some of the information in respect of the latter were obtained through the means of interviews conducted when the author was on field research.

4.3.6 CONTRIBUTIONS TOWARDS COSTS OF OPERATIONS.

So far as contributions towards the costs of the joint operations are concerned, both types of agreements provide that the exploration, development and production costs are to be put up by parties, according to their participating interest percentages. In the case of equity participation agreements such contributions are to be made through cash calls mainly based on work programmes and budgets presented by the foreign partner and approved by the NNPC. But with regards to the non-equity participation agreements, the foreign partner provides the initial capital for the operations at his own risk. If no commercial discovery is made, the foreign partner is not reimbursed for his expenses. But if exploration does result in commercial discovery, the NNPC will reimburse the foreign partner for its share of the exploration expenses in accordance with its percentage of participating interest.

Furthermore, funds contributed by NNPC and the MNOCs for joint operations are also expended for the payment of all salaries and fringe benefits of the personnel of the joint operating ventures, viz. staff housing schemes, pensions, gratuities, and several other benefits and services.

4.3.7 THE OPERATOR.

Under both kinds of participation agreements, there are provisions for one of the parties (mostly the foreign partner) to be designated as "operator" for the conduct, management and control of the joint operations. But in the NNLG joint operating agreement the term "technical leader" was used instead of the word "operator", even though they both perform similar services.[71] The operator is obliged to conduct the operations in a prudent manner, in accordance with good oil-field practice and in compliance with applicable laws and regulations. In this sense, such rules and regulations refers to the provisions of the Petroleum Act 1969 regarding OPLs, OMLs as well as those of the PPT Act 1971. Further, the operator may conduct some operations by itself or through its agents or contractors but the operator generally remains responsible for the operations carried out either by itself or on its behalf. The reason behind having the foreign partner as operator is because it has the necessary technical expertise.

In discharging its responsibilities, the operator is subject to the overall supervision and direction of the operating or management committee consisting of duly nominated representatives of the parties. The NNPC does not interfere in the internal management of the operator except for the

71 See Final draft of the Joint Participation Agreement between NNPC and Shell/Agip/Elf in respect of the establishment of the NNPC subsidiary - the Nigerian Liquefied Natural Gas Company Ltd, Clause 12, dated 20/4/1989 at p.23.

purpose of monitoring compliance by the operator with the agreements and government policies. Hence, the operator is obliged to give NNPC at the latter's own risk and expense free access to all field operations and installations for the purpose of inspecting and observing all operations and ensuring that the operations are being conducted in accordance with the agreement. Similarly, NNPC has a right of access to the records and information obtained from the operators.[72]

Given the extended scope of joint venture expenditure indicated above, the operator receives no remuneration for its duties as operator.[73] However, the costs of services rendered by the parent company of the operator in connection with the joint operations are chargeable as expenses to joint account.

4.3.8 RIGHTS AND DUTIES OF THE OPERATOR.

The rights and duties of the operator can be summed up as follows: the operator,

(1) has the right and obligation to conduct operations in a safe, technically sound and financially prudent manner;

(2) has free hand to conduct operations up to a limit, beyond which it must seek the approval of NNPC;

Other specific responsibilities of the operator include:

(1) preparation and implementation of work programme and budgets;

(2) provision of reports and information to NNPC;

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72 Much of the information in this paragraph is owed to Olisa, op.cit. pp85-89.

73 See Article 5(1) of the NNPC/Elf Participation Agreement 1985. p.8.

(3) provision of all technical and advisory services, required for the efficient performance of operations.[74]

The operator can be replaced by another if it defaults in its duties or obligations or becomes bankrupt or insolvent and fails to commence to rectify the default within 30 days after written notice from other co-ventures or the NNPC as the case may be specifying the default and requiring the operator to remedy the default.[75] If NNPC is the only other party to the joint operating agreement, it will assume the duties of and become the operator. On the other hand, if NNPC is unable or unwilling to become the new operator, a new operator will be appointed by NNPC.

4.3.9 MANAGEMENT OR OPERATING COMMITTEE.

The Operating Committee or Management Board as it is variously called are formed by the parties to the participating agreements for the purpose of providing overall supervision and direction of all matters pertaining to the joint venture operations. In all the participation agreements, the NNPC representatives are in the majority by virtue of its majority participation interests. For instance, under the NNPC/Gulf Participation Agreement signed in 1984, the management board consists of 6 government representatives and 4 from Gulf. Similarly, under the NNPC and Shell/Agip/Elf Participation Agreement, it is stated that "Any holder of shares in the JVC shall be entitled to nominate 1 Director for every 10 per cent of issued share

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74 Interview information.

75 See Clause 35(1)(2) of the NNPC and Shell/Agip/Elf Agreement, op.cit.

capital of the JVC held by it".[76] Accordingly, upon incorporation, the NNPC with 60 per cent equity holding, nominated 6 Directors, Shell with 20 per cent equity holding had 2 Directors with Agip and Elf having 1 Director each by virtue of each having 10 per cent equity interest. Although the operator has the right and obligation to conduct operations freely, the Committee or Board exercises general supervisory role over such operations. For instance, it exercises such supervisory role as to:

(1) the approval or disapproval of budgets and authorising of expenditure and work programmes in which the total cost is beyond the limits of the operator's authority;

(2) approval of contracts which involve more than N200,000 (Naira=Nigerian currency);

(3) disposition of items of the assets or working capital of the joint venture, and

(4) sale or disposition of vital information to third parties.[77]

Under such circumstance, it would have been a good opportunity for NNPC with its majority on the Board of Directors to influence decisions and their implementation in the ventures to the country's advantage, but it is not so. The reason is because as stated in chapter four most of the Nigerian representatives on the Board are not knowledgeable in petroleum matters and hence they end up as "sleeping

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76 Ibid Clause 4(2)(1).

77 Interview information.

partners" or "sit warmers" when it comes to discussions on matters of crucial importance in the industry.

4.3.10 DURATION.

Since one of the subject matters of participation interests acquired from the foreign oil companies by NNPC includes the OMLs, the duration of some of these joint venture agreements are the same as those of the OMLs, viz. 20 years. The only exception is in the case of the NNPC and Shell/Agip/Elf (NNLG project) Participation Agreement, where its duration is for a period of 25 years. All these, no doubt, are shorter than under the traditional concession regime.

The non-equity participation agreements state categorically that the OMLs and all other provisions of the 1969 Petroleum Act relating to the existing agreements shall continue to have full force and effect, save only as modified by the terms of these agreements. But strangely enough, it took 7 years after these agreements were supposed to have been concluded, before they were finally executed with all the NNPC co-venturers. It was uncovered by the Justice Irikefe Tribunal of Inquiry set up in 1979 to investigate a media allegation of loss of N2.8 billion from the accounts of NNPC, that none of the co- venturers of NNPC had formally executed any participation agreement with the NNPC.[78] In effect, this means that there was no formal execution of the participation agreements with these companies for all those years, so that if any of them had been in breach of the agreements there would have been no basis to hold it

78 For full text, see, Justice Ayo Irikefe's Crude Oil Sales Tribunal Report 1980. Federal Government Press, Lagos.

responsible. The absence of formal execution of these Agreements notwithstanding, a study carried out on the working relationship of the NNPC and its co-venturers over those years revealed that the relationship was generally good.[79] As even conceded in the Report of the Irikefe panel, "Despite the fact that these documents have not been formally completed, the production and sharing of crude oil won have not been hindered or frustrated".[80]

4.3.11 TAXATION, FEES AND ROYALTIES MEASURES.

All the copies of participation agreements are silent on what rates of taxation, fees or royalties are payable by the co-venturers to the Government. Since also included as subject matters of the participation agreements are the OPLs and OMLs, it goes without saying that the provisions relating to these licences and leases in the Petroleum Act 1969 which pertain to fiscal measures will apply to these agreements. That means that both NNPC and the co-venturers in the course of their joint operations are liable to payments of royalties, taxation and other chargeable fees as prescribed for holders of the OPLs and OMLs. In the same vein, the provisions of the Petroleum Act 1969 which apply to holders of both OPLs and OMLs will govern those aspects which the Participation Agreements are silent on such as, recruitment and training of nationals, assignment, revocation and relinquishment of areas of grant.

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79 See Etikerentse op.cit.pp.13-15.

80 Paragraph 32, p.16, of the Crude Oil Sales Report, op.cit.

Finally, on the question which law will govern the joint venture operations, all the Participation Agreements state unequivocally that the Agreements "shall be construed, interpreted and governed in accordance with and by the laws of Nigeria.[81] But the position is different with regards to which Arbitration Law shall govern disputes arising between co-venturers. All the Participation Agreements with the exception of the most recent i.e. between NNPC and Shell/Agip/Elf (NNLG Ltd) state that the Arbitration Laws of Nigeria shall apply. Under the NNPC and Shell/Agip/Elf Agreement, the position is as follows:

> "The Government of the Federal Republic of Nigeria having ratified the Convention on the Settlement of Investment Disputes between States and Nationals of other States, the parties hereto shall submit all disputes arising out of this Agreement to Arbitration before the International Centre for Settlement of Investment Disputes between States and Nationals of other states (ICSID), subject to the jurisdiction and the arbitration procedures of the said convention and rules of ICSID."[82]

One possible explanation that can be proffered for such marked difference in terms of Arbitration Law between this Agreement and others before it may be because, Nigeria just recently ratified the ICSID Convention, hence the reason why the past agreements are not subject to ICSID is obvious.

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81 This provision was clearly demonstrated in the case of Shell-BP Petroleum Development Company V Federal Board of Inland Revenue (F.B.I.R.) 2 F.R.C.R. 1976 39, in which a dispute between the parties over the interpretation of the term "petroleum operations" for the purpose of assessment of the income tax of the plaintiff company was referred to the Federal High Court of Nigeria for settlement.

82 Clause 40(1) of the NNPC and Shell/Agip/Elf (NNLG Ltd) Participation Agreement at p.45.

4.4 GENERAL ASSESSMENT.

At the outset of this Chapter, we examined the old-style concession regime in Nigeria where MNOCs were granted rights over huge areas, for long periods, without any specific obligations relating to work or expenditure in return for modest rents to the country. No doubt, in recent years this kind of agreement will be seen as old-fashioned. The granting of exploitation rights to an oil foreign investor company is now seen in a more business-like context. The foreign companies or MNOCs recognise that a host country will no longer be prepared to grant rights over its hydrocarbon except in return for specific work and expenditure obligations which can be quantified, assessed and monitored at each stage in the life of the project. The reason behind it all is that the host countries have become increasingly aware of the benefits to be obtained from the exploitation of their hydrocarbon resources and want to maximise the financial return to themselves for enhancement of their economic growth and development. This quest by host countries for the achievement of greater benefits from the exploitation of their petroleum resources had two consequences. Firstly, it has led through legislation, negotiation and renegotiation to the modification of the traditional concessions as an instrument for governing relations between MNOCs and the host countries. The revised concession agreements, as we saw in the case of Nigeria, were for shorter periods, smaller areas and with increased revenue returns for the host countries, usually in the form of a combination of royalties and taxation.

Secondly, it led to further transition from the revised concession agreements to a new type of petroleum development agreement with provision for equity or non-equity participation by the host country in the exploitation of the resources. Participation agreements in either corporate or unincorporated joint ventures are now established features of contractual arrangements through which host countries seek to exercise greater control over the exploitation of their hydrocarbon resources. It has again been observed that another reason for their popularity and use amongst host countries is due to the fact that they are seen as a medium to attract outside assistance in the form of large risk capital, technological and management expertise, which are necessary for the development of petroleum resources.[83] On the other hand, to the MNOCs, state participation helps diffuse nationalist feelings against foreign domination of the economy by showing the presence of nationals of the host countries in the joint operations. Thus, it has been rightly observed that, participation agreements and related agreements have proved readily adaptable mechanisms for accommodating the aims of host countries, whilst reducing the economic and political risks involved in mineral explorations and development.[84]

In assessing these developments, three points may be made. First, although participation agreements are perceived by

83 Zakariya, H.S., "New directions in the search for and development of petroleum resources in the developing countries." Vanderbilt Journal of Transnational Law. Summer 1976 Vol.9 p.556

84 See Walde, T., "Revision of transnational investment agreements: Contracts flexibility in natural resources development 10 lawyer of the Americas, 1978, p.265 and also Page op.cit at p.228.

host countries as vehicles for exerting control over the exploitation of their hydrocarbons, the reality of the situation is that participation or equity ownership does not mean control for these countries. In practice, it only helps to boost the political image of the host government, for the real control remains with the MNOCs, because the country lacks the technical know-how and management skills to effectively project government's interest. Despite the majority equity position of the host country in the joint venture, the effective powers are in the hands of the MNOCs. Because as operators they are in charge of exploration, maintenance programmes, supplies of equipments, the employment of expertise and all operational matters. For instance, as we noticed in the case of Nigeria, even though the NNPC has a built-in majority on all the boards of the joint venture companies, the fact that all proposals emanate from the operator leaves no doubt that the latter's representatives may have a fore-knowledge of such proposals and readily approve of them. Since the Nigerian representatives do not have the same fore-knowledge because of their distance from the operational management of the joint venture plus their lack of knowledge in oil matters, the likelihood is that they will go on to approve it without full grasp of its implications.

In addition, by leaving all technical and economic matters including evaluation, programming, etc, to the operators, it builds no foundation for NNPC to acquire skills for operations. In a sense, with the agreements limiting Nigeria's involvement in managerial tasks to the exclusion of operational matters, attainment of independent operational capacity is being frustrated. As one commentator remarked in respect of a similar subject, "...that unless the host country has the skill and expertise, the control is rather political".[85]

Secondly, the notion that by concluding joint participation agreements a host country will enhance its revenue earning position merits some comment. This hypothesis is founded on the premise that under participation agreements, the government could receive, in addition to tax and royalties, dividends proportionate to its interest in the venture. For example, if the government has 60 per cent equity interest in the operations it takes an equivalent dividend while at the same time receiving the normal tax plus any dues payable under its fiscal laws. However, it has been argued by Ogunlami in his work on the 'Nigerian Petroleum Profits Taxation' that this may not be always true because, for instance, a 50 percent dividend may not bring more revenue than a 50 per cent tax. This, he maintains is so because, all costs and expenses including interests on loans, debts and investment funds are deducted before dividends are paid but not before tax.[86] As a result, a Government having contributed its share of investment and other necessary payments can suffer a proportionate loss in the event of the joint venture company not making any profit at the end. This

85 Mankabady, S., "Oil Contracts in the Middle East." The International Contract Law and Finance Review, April 1980 Vol.1, No.2, at p.119.

86 See Ogunlami, G.K.N., An Analysis of Nigerian Petroleum Profits Taxation, An Unpublished Ph.D. Thesis, 1989, Centre for Petroleum and Mineral Law Studies. University of Dundee.

contrasts with any contractual arrangement such as the risk service contracts which involves no financial commitment on the part of the host country and under which the financial return is calculated solely on the basis of taxes, royalties and other payments. But, however, in my opinion, if the joint venture is making profits, it is in the government's best interest to actively participate rather than being a watcher and waiting for the operator to make returns at the end of the year. Doing so will be tantamount to turning the hand of the clock back to the old concession regime and all its inequities.

Finally, even though the terms of the participation or joint venture agreements were, at the beginning, more favourable to the host countries compared with the traditional concession regime, they have not remained static. Because of the changed circumstances and the improved bargaining position of some host countries (notably OPEC producers), many countries have been able to negotiate new and better terms of agreements, as well as adjust disparities as they arise under the earlier agreements. It is in the light of this too that Nigeria negotiated new kinds of petroleum development contracts, viz. production sharing and risk service contracts which are the subject matters for our discussion in the ensuing chapter.

CHAPTER FIVE

FORMS OF PETROLEUM CONTRACTS II: PRODUCTION SHARING CONTRACTS AND RISK SERVICE CONTRACTS.

5.1 INTRODUCTION:

In the preceding chapter, we analysed the early forms of petroleum agreements Nigeria had with M.N.O.Cs. Aside from those early forms of agreements viz., concession regimes and the joint venture agreements, Nigeria also engages in other contractual arrangements for the exploitation of its hydrocarbons called production sharing contract (P.S.C.) and risk service contract (R.S.C.). It is now proposed to devote this chapter to a detailed analysis of these contracts vis-a-vis the Nigerian oil industry. Their merits and demerits are examined and comparisons between them and the early petroleum agreements in such important aspects as transfer of technology, training of nationals and remunerations, *inter alia,* are included in the treatise. The chapter aims to highlight the possible reasons why Nigeria resorted to these contractual arrangements. We first begin with Production sharing contract.

5.2 PRODUCTION SHARING CONTRACT.

William and Meyers define the term Production sharing contract as;

> "A contract for the development of mineral resources under which the contractors costs are recoverable each year out of the production but there is a maximum amount of the production which can be applied to this cost recovery in any one year. This share of oil produced is referred to as "cost oil". The balance of the oil is regarded as "profit oil" and is divided in the net profit royalty ratio- for instance, 55% to the government. After the contractor has

> recovered its investment, the amount of "cost oil" will drop to cover operating expenses only and the "profit oil" increases by a corresponding amount...."[1]

This type of contract originated in Indonesia in 1960s when it was first used in the agricultural sector, and then the oil industry. Since then, it has become very popular in the oil industry the world over. Under this agreement, the MNOC acts as a contractor and risk bearing investor, but the ultimate responsibility for control and management of the enterprise, in principle at least, is in the hands of the host country's national oil company. Other features of this contract include, the contractor is engaged in oil exploration and production on the understanding that it has no title to the oil deposit; and continuation of the contract depends upon oil being discovered in commercial quantities, otherwise the contractor bears all the risks. But if oil is discovered in commercial quantity, the contractor recoups itself for its investment and cost of operations out of crude oil after deducting royalties and tax.[2] Thereafter, profits are shared on pro rata basis between the two parties.

One other distinguishing feature of PSC is that the government receives a revenue from the beginning of production through its share of the "profit oil". Furthermore, ownership of any petroleum discovered remains vested in the state or the national oil company, and the

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1 William, H.R. and Meyers, C.J., Oil and gas law, Matthew Bender and company, New York, 1962 p.686.

2 Barrows, G.H., World Petroleum Arrangements, New York.1980 P.7.

contractor does not acquire title to its share of the oil until the oil reaches the point of export.

The production sharing arrangement typically frees the host state from contributing to the direct costs of operations. This arrangement also allows the state to participate in control of oil operations through an operating or management committee, although day-to-day management is undoubtedly the responsibility of the contractor.

The merit of such an agreement include, firstly, it reduces the incidence of tax evasion by a MNOC through manipulation of prices, since each party receives its entitlement in oil rather than in cash, thereby reducing conflicts.

Yet another merit of this contract is that it frees the host country from directly bearing the costs of the initial operations since all are borne by the MNOC, thereby allowing the country's resources to be channelled into other pressing engagements. But as soon as commercial discovery is made, the government could come in and receive its share whether the MNOC has made profit or not. Because of that it is said to provide the government with much balance of payments than would other agreements.

On the MNOC's (contractor) side, PSC ensures quick recovery of costs as well as assured supply of petrol even to its customers. Unlike a joint venture under which the MNOC has to continue bearing costs over the life span of the contract, by entering into PSC, it may recover all its expenses within the first three years provided production and markets are available.

It must be borne in mind also that this agreement is not without drawbacks. Thus, for instance, because a MNOC has to recover the cost of exploration and production from its share of the "cost oil" the host country will be concerned with these expenses which the company has to recover. This includes the cost of exploration, equipment and other services related to the project chargeable and recoverable from cost oil. Thus, a MNOC could afford to be wasteful or engage in transfer pricing as a means of enhancing its returns since it knows that all costs and expenses incurred by it are reimburseable. As a result of this, some countries such as Libya do not allow exploration costs as recoverable.[3]

It is also likely for a contractor after realising that it is more beneficial or profitable to concentrate on producing one oil field to slow down the pace of exploration of new areas covered by the contract, the benefits flowing to the host country from such unwarranted slow pace of exploration would be to the eventual detriment of the host country.

In effect, it is proper to say that the PSCs were "devised to avoid the political opprobrium which in the oil producing countries has become associated with concessions",[4] in that it represents an effort to divorce foreign capital with

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3 See Barrows op. cit. p.55 for Libyan Production sharing contract provisions on fiscal regimes.

4 Adedeji, K., "State participation in the Nigerian petroleum industry", 11 JWTL 1977 p. 170.

foreign ownership. They are also described by one author as involving a credit from abroad to be repaid from the results of production or from the improved quality of production.[5]

5.2.1 BACKGROUND OF NIGERIAN PRODUCTION SHARING CONTRACT.

In Nigeria, as in most developing oil exporting countries, the PSC is essentially a form of commercial transaction for the development of petroleum resources of the state which, as a sovereign owner of vital depletable resources, seeks to exercise its sovereign rights in the development of the resources by foreign enterprise. Hence, on March 25, 1973, the Nigerian government through the agency of NNPC signed the first and only PSC with Ashland America Oil Company. Under the contract, Ashland is to provide all the technical and financial requirements until oil is discovered in commercial quantity.[6] But in case no oil is found, the company bears all the risks. In other words, NNPC bears no responsibility whatsoever for an unsuccessful exploration and cannot reimburse or contribute to any failure. But Ashland can, with written consent of NNPC sell or otherwise dispose of any part of its rights and interests to others.

Further, Ashland has an interest in any oil discovered and all data obtained must be turned over to NNPC. The company is in charge of management and operations, in accordance with "efficient and workmanlike standards" and to avoid

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5 Fabrikant, R., "Production sharing contract in the Indonesian petroleum industry", 16 Harvard International law Journal, 1975 p. 37

6 In Nigerian oil Industry, oil is said to be discovered in commercial quantity when the Petroleum Inspectorate is satisfied that the oil well struck is capable of producing at least 10,000 barrels of crude oil per day.

waste and water or land pollution. It also prepares the work programme and annual budgets which must be approved by NNPC. NNPC and Ashland professional staff work jointly in petroleum operations. While NNPC is to help procure the visas, work permits, right of way and easement which may be required by Ashland, in turn, Ashland is to provide all the machinery and equipment needed for the operations, such equipment will pass to NNPC upon arrival in Nigeria. This is said to be one advantage PSC has over JVC.

5.2.2 DURATION OF THE CONTRACT.

The contract's duration is for an initial term of 20 years effective from 1979 and is renewable for a period of five years with the consent of NNPC. Ashland may terminate the contract at any time upon three months prior notice in writing to that effect but if termination takes place before Ashland spends the prescribed minimum expenditure, it will pay to NNPC the unspent portion of minimum expenditure. If crude oil is not discovered in commercial quantities in the contract area within five years from the effective date of the contract, the contract terminates automatically.[7]

5.2.3 RIGHTS AND OBLIGATIONS OF THE PARTIES

Under the contract, Ashland is to provide all the risk investment required for approved work programme, purchase or lease of equipment, purchase of materials and supplies, technical requirements and remuneration of its personnel engaged in the operations. And the provision which purports

7 Clause 2(c) of the Ashland/NNPC contract.

to give Ashland the right to dispose of its interests under the contract appears to be extremely wide in scope. It stipulates that "the contractor (Ashland) is given the right to sell, assign, transfer, convey or otherwise dispose of any part of its rights and interests" subject only to the prior written consent of NNPC, which consent shall not be unreasonably withheld.[8] Under such a provision Ashland can rightly maintain that it has the right subject only to NNPC's consent, to assign its contractual right to carry on petroleum operations for or on behalf of NNPC. Since as we saw earlier, the only restriction imposed on the right of Ashland to dispose any of its rights or interests is the grant of NNPC's consent or the withholding of such consent. The concept of unreasonableness in my view is perhaps insufficient to protect the interest of NNPC in the light of the wide powers given to Ashland to dispose of any of its interests under the contract. It is better for NNPC if the right of Ashland is unassignable but Ashland could retain the right to engage sub-contractors for specified operations.

NNPC on its part is allowed to contribute professional staff to participate in the petroleum operations and is required to assist the contractor in obtaining necessary local funds, visas and work permits for its expatriate staff and in acquisition of surface rights. The cost incurred by NNPC in rendering such assistance is reimburseable to NNPC. The contract also assures the contractor that it will not be

8 Ibid. Clause 5 (e).

discriminated against in any way and will be treated as well as other oil companies operating in Nigeria. NNPC is required to also furnish Ashland with all geological, geophysical, drilling well, production and other information which are in the possession of NNPC relating to the contract area. This is worthwhile in order to assist Ashland smoothly undertake its contractual obligations.

5.2.4 CONTRACTOR'S REMUNERATION.

The contract defines the term "operating costs" as expenditures made and obligations incurred in carrying out petroleum operations, excluding the signature bonus[9] payable..."[10] Perhaps the term is defined as it is because all allowable costs under the contract are recoverable from production if and when obtained.

Ashland pays rents, royalties, production bonuses these together with operating costs including interest costs on borrowed funds, are recoverable out of cost oil put at 50% of total oil produced in the first year. Any short fall is carried over to succeeding years. "Cost oil" here means available crude oil the contractor is entitled to receive and retain to permit recovery of rents, royalties, operating

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9 This is a one-off payment by a MNOC to the host country on signing of a contract for petroleum exploration. Since it is usually paid even before exploration has started, it affects the net value of the project, especially if the MNOC uses a high discount rate as in higher risk areas. It is of value to the host country as a source of foreign exchange and helps to defray the administrative costs associated with running a petroleum industry.

10 Ibid Clause 1 (iii) (o).

costs and interest on moneys borrowed for petroleum operations.[11]

In addition, Ashland is allowed to include 2% of the operating costs. After deducting cost oil, the remainder is allocated to Ashland and applied towards Petroleum Profits Tax. If the net realised price of the tax oil is insufficient to pay for the Petroleum Profits Tax, the balance is paid by NNPC and Ashland in the proportion of 65% to 35% respectively. However, if the available crude oil exceeds 50,000 barrels per day the balance is paid 70% by NNPC and 30% by Ashland. Similarly, the balance of available crude oil after deducting cost oil and tax oil, is shared by NNPC and Ashland in the proportion of 65% and 35%, but if daily production exceeds 50,000 barrels, NNPC's share is 70% while Ashland's is 30%.[12]

Each party under the contract, has the right to take in kind and dispose available crude oil allocated to it. Thus Ashland takes in kind cost oil and its share of remaining available crude oil so long as it finances the operations and conducts the same in accordance with approved work programme and pays the applicable rents, royalties and petroleum profits tax.

There is one school of thought which holds the opinion that Ashland is not liable to pay Petroleum Profits Tax on its allocated share of available crude oil but is liable to pay

11 The discussion on this subject is terse, for details on how the cost oil is recovered and how the remaining fiscal obligations are carried out, see Olisa, M.M., Nigerian Petroleum Law and Practice, Fountain Books Limited Ibadan. 1987 pp. 123-124.

12 Olisa op. cit. p.126.

income tax under the Companies Income Tax Act 1979. The reason is that since Ashland conducts petroleum operations not on its own behalf but on behalf of NNPC, such operations are not within the ambit of the Petroleum Profits Tax Act 1959.[13] Another school of thought is of the view that, in practice, the Petroleum Profits Tax is paid jointly by NNPC and Ashland in the proportion of 65% to 35% and that it will amount to double taxation if Ashland is also liable to additional tax under the Companies Income Tax Act 1979. However, for no stated reason, the latter school of thought is applied by the Federal Inland Revenue Department.[14]

The contract further stipulates that Ashland can market all or part of NNPC's share of the available crude oil if NNPC so notifies it in writing. NNPC may give Ashland the power to bind it in any crude oil sales agreement entered into by Ashland for sale of NNPC's share of available crude oil. For the sale of NNPC's share of the oil, Ashland receives a commission of one and one half percent of the sales price f.o.b. at the point of export for the first 100,000 barrels per day sold. For sales of volumes exceeding 100,000 barrels per day, the additional volumes attract a commission of 1% of the sales price f.o.b. at the point of export.[15] Ashland is required to instruct all purchases of crude oil sold for the account of NNPC to make all payments due under the

13 This information is owed to Ogunlami, G.K.N., An Analysis of Nigerian Petroleum Profits Taxation, Unpublished Ph.D. Thesis 1986, Centre for Petroleum and Mineral Law Studies, University of Dundee, Scotland, p.143.

14 The Federal Inland Revenue Department is one section of the Nigerian Federal Board of Inland Revenue charged with the responsibility of imposing tax upon profits got from petroleum operations in Nigeria.

15 Olisa. op. cit.p.128.

contract, less the contractor's commission to an account in any bank designated by NNPC.

At the end of each calendar year Ashland furnishes auditors appointed by NNPC with all necessary information and gives them access to all books and records pertaining to crude oil sales made by the contractor of NNPC's share of available crude oil during the year.

5.2.5 TITLE TO EQUIPMENT

All equipment purchased by Ashland for the performance of the contract are the property of NNPC but Ashland is entitled to recover the landed costs. Ashland has the right to use the equipment purchased but the right ceases upon the termination or expiration of the contract. Ashland is allowed to export leased equipment subject to the provisions of the equipment lease.

5.2.6 EMPLOYMENT, TRANSFER OF TECHNOLOGY AND TRAINING OF NATIONALS.

Like most contractual agreements between NNPC and MNOCs, the PSC with Ashland contains provisions on employment, training and transfer of oil technology to local personnel. Infact by law as well as by policy guide-lines,[16] the employment of expatriate technicians is permitted by Nigerian government only until such time as domestic personnel can be adequately trained for those jobs or offices. Such training is regarded

16 This refers to the combined effects of the Petroleum Decree 1969 as amended and the Nigerian Enterprises Promotion Acts 1972-77.

as an essential component of the process of acquiring and absorbing oil technology. The contract provides that Ashland

> "shall undertake to make the maximum use of available indigenous Nigerian manpower in the conduct of petroleum operations. Furthermore, Ashland shall within six months after the effective date and after consultation with NNPC submit for NNPC's approval a detailed recruitment programme and within twelve months, submit for NNPC's approval a training programme for all Nigerians employed by Ashland in the conduct of all Petroleum operations in accordance with the Petroleum Decree 1969".[17]

All the costs and expenses of training of Nigerian personnel under the agreement are included in the production costs or development costs and are recoverable out of the cost oil on commencement of commercial production.

There is no doubt under the contract that Ashland is to prepare and implement plans for the technical training and education of nationals for all job classifications in accordance with the Petroleum Decree 1969. It is noted that the exact type and level of training to be given to nationals are not contained in the contract; such provision are contained in the Petroleum Decree 1969. Take for instance, it provides for minimal Nigerian representation of 50%-70% for skilled workers and 100% for unskilled workers.

5.2.7 OTHER PROVISIONS.

The rest part of the contract deals with relinquishement and exclusion of areas, work programmes and settlement of disputes provisions.

17 Clauses 26-29 of the Petroleum Decree 1969.

Finally, on the question of applicable law, the contract is governed by the laws of Nigeria and any disputes arising will be determined in accordance with Nigerian legal system. However, it is noticed that the contract is silent on both 'stabilisation' and 'renegotiation' clauses. The import of stabilisation clauses is essentially to give the MNOC a status of continuity consistent with the reasonable satisfaction of commercial expectations. Their aim is to insulate the relationship from changes in the contents of the law of the host state. On the other hand, renegotiation clauses allow the terms of the contract to be adjusted in case of any change of circumstance affecting substantially and adversely the interests of the parties under the contract. As regards these two clauses, experience shows that when incorporated in contracts the parties tend to rely more on them in order to define the concepts of force majeure, hardship and filling of gaps (as well as the consequences attached to such clause) than on ordinary rules of law. This is understandable since these concepts do not have the same connotation in all legal systems. But one would have expected that, at least from Nigeria's point of view, a clause on renegotiation will be included in the contract so that the country can rely on it whenever she wants to alter the terms of the contract in the future. Because as it stands, the country has no basis on which she can easily renegotiate the contract except through the long process of passing a legislation or starting the process all over again, which in my opinion is much cumbersome.

5.3. A GENERAL ASSESSMENT OF THE CONTRACT.

The production sharing agreement in Nigeria broadly follows the Indonesian model between Pertamina, its state agency and such MNOCs as Independent American Oil Company, Agip, etc. However, there are few differences between the two, some of which are; firstly, whereas in Nigeria title to oil passes to the contractor at well-head, in Indonesia it only passes when it reaches an export point. In other words, Pertamina owns the oil produced until it reaches the export stage before the contractor assumes title. Although this is said to be of little significance. The only significance of postponing the transfer of title from the well-head to the point of export is that it reassures that the complete ownership of hydrocarbons is vested in Nigeria.[18] This distinction tends to be artificial in functional terms and is, at least, only a technical device for conforming to the external trappings of national sovereignty over natural resources.

Secondly, whereas in Nigeria management is vested in Ashland, the Indonesian agreement reserved this for Pertamina. This enables Indonesian government to issue directives to the contractors and monitor their activities to see that they acted in the best interest of the country. However, while performing its responsibilities, Pertamina must confirm with the contractors. Furthermore, it exercises this power sparingly so as not to come into confrontation

18 Fabricant, R., Oil Discovery and Technical Change in Southeast Asia- Legal Aspects of PSCs in the Indonesian Petroleum Industry. Institute of Southeast Asia Studies. Singapore, 1973 p.137

with the contractors, or provide them with an excuse to cut down operations or even drive away other potential investors. Besides, Pertamina is not technically competent enough to dictate or impose its opinion on the contractors. Nevertheless, the provision has the advantage of assuring the nation that their oil sector is in their hands, and the hope of them ultimately taking total control as a result of the active role they have been playing.

Thirdly, in the case of Indonesia, until 1974 when the contracts were renegotiated allowing contractors maximum cost oil equivalent to expenses incurred, it used to be limited to 40%, whereas in Nigeria it is now 50% as modified retroactively from 1977, thereby making the Nigerian cost oil one of the highest among oil producing countries engaged in production sharing arrangements.[19]

Other differences exist and will be pointed out as we go along, but it needs be stressed at this juncture that the Nigerian PSC can be described as less ambitious and one of the most liberal if compared with other PSCs elsewhere. We will come back to this point shortly.

However, on the plus side, the arrangement whereby Ashland bears all the initial technical and financial responsibility for exploration and drilling is good enough, because the government loses nothing at that stage. This makes it more attractive than a joint venture under which the government

19 The only other country with high cost oil allocation as Nigeria is Peru. For details, see Oil Money, Special Report No. 59. New York 1983.

may suffer losses from unsuccessful exploration. The PSC does away with that, and such funds may be utilised on other projects.

Another interesting provision in the contract is that putting NNPC in an intermediary position between Ashland and government agencies, namely NNPC is to obtain visas, work permits and easements rights which may be required by Ashland while the latter concentrates on oil production. This provision is interesting in view of the bureaucratic procedures and obstacles one has to follow in order to obtain these things. Hence, Ashland was wise enough to throw the burden onto NNPC, knowing fully well that being a state agency NNPC will find it easier to deal with other state agencies. Commenting in relation to a similar role played by Pertamina in Indonesia, Fabrikant remarked that;

> " The prospect of having a government agency negotiating on their behalf with Indonesian officialdom, Pertamina, it was thought could deal more effectively than the contractors with government agencies, enabling the contractors to concentrate on the principal task of finding oil. Pertamina has thus far concentrated mainly on providing liaison with government agencies and the companies, and generally expediting petroleum operations by reducing the likelihood of a contractor entangled in the considerable government bureaucracy."[20]

With regards to control, we earlier on mentioned that the Nigerian agreement departs from the Indonesian model in entrusting management and operational control exclusively to Ashland. It is feared that will make it hard to achieve the much sought control over natural resources and transfer of

20 Fabrikant 1975 op. cit. p.40

technology through "on the job" training very difficult notwithstanding the proviso that Ashland is to work closely with NNPC officials. It would have been better if the agreement had provided for a transfer or proportionate sharing of management and operational positions as soon as commercial production begins. That would have provided a watch-dog on Ashland's activities in the areas of production and marketing, and would also afford NNPC officials an "excellent opportunity for learning the operational techniques and skills of the petroleum company, a process which will ultimately strengthen NNPC's supervisory functions and consequently its control".[21]

As regards to the fiscal regimes, if the Ashland/NNPC agreement is evaluated on that basis, it could be argued that the fiscal and production arrangements does not give Nigeria enough financial returns compared to PSCs in countries like Indonesia, Malaysia and Libya. A general remark that a particular PSC gives or does not give a government enough financial returns is more meaningful if such statement is made in the context of a comparison between two or more PSCs. Thus the following summary of relevant arrangements in Indonesia, Malaysia and Libya is illustrative of the variations found in fiscal and oil sharing agreements in these countries and Nigeria.[22]

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21 Asante, S., " Restructuring Transnational Mineral Agreements", 73 A.J.I.L. 1979 p.366.

22 The conclusion reached in relation to Nigeria is also informed by the Report of Justice Ayo Irikefe Tribunal of Inquiry into crude oil Sales 1980 which we shall refer to shortly.

INDONESIA

(i) "In the recent form of production sharing contracts, allowable costs are recoverable from available production without volume restriction.
(ii) Balance of available crude oil is shared 65.99% to 34.0% in favour of the state owned company;
(iii) The contractor pays 45% tax on income and a 20% dividend tax;
(iv) The net effect of sharing with the state owned company is 85 to 15 sharing of the net proceeds of production. However, the state owned company is responsible for management of the operation, but the contractor bears the risks and prepares and executes the work programme".[23]

MALAYSIA

(i)"A maximum of 20% of total crude oil production is set aside for cost recovery and within this limit all recognized costs are recoverable on an expensing basis, no depreciation or amortization rules being applicable;
(ii) 10% of total crude oil production is reserved for the state-owned company for purposes of royalty payments;
(iii) Profit oil is shared 70% to 30% in favour of the state-owned company;
(iv) The contractor pays income tax at the rate of 45%;
(v) The contractor is obliged to make a cash payment of 70% of any increase of crude oil value per barrel above the base price for the year concerned".[24]

LIBYA

(i) "No part of production is set aside for cost recovery; instead, the contractor receives 19% or 15% of production in off-shore and onshore agreements respectively;
(ii) After a commercial discovery is made, the state owned company advances *pro rata* to its oil share (81% or 85%) part

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23 Blinn, K.W., & et al. International Petroleum Exploration and Exploitation Agreements; Legal Economic and policy Aspects. Euromoney Publications, 1987 p.78

24 Oil Money , Special Report No. 59. New York. 1983 p.188.

of the development expenditure, to be repaid by the contractor partly or wholly with interest as soon as certain production target has been achieved;

(iii) The contractor is exempted from taxes on income".[25]

For analytical convenience, a summary is provided below of similar arrangements under the NNPC/Ashland PSC.

NIGERIA

> (I) Up to 50% of available production is set aside as "cost oil" for reimbursement of contractor's allowable costs;
> (ii) 55% of the balance of available production after deducting cost oil is allocated as "tax oil" for the payment of Petroleum Profits Tax, but if the proceeds of tax oil are insufficient to pay such tax, the state-owned entity and the contractor provide the additional amount in the same ratio as they share profit oil i.e. 65:35% if the available crude oil exceeds 50,000 barrels per day.
> (iii) The remaining available production after deducting cost oil and tax oil -(profit oil) is shared in the proportion of 65% for the state-owned entity and 35% for the contractor but if production exceeds 50,000 barrels per day, the proportion is 70:30%;
> (iv) The contractor is entitled to 2% of operating costs as "over head";
> (v) The contractor is responsible for marketing cost oil, tax oil, its own share of profit oil and all the state-owned entity if the entity does not elect to lift its share.[26]

An examination of these provisions reveals the following points regarding the Nigerian agreement:

(i) The percentage of production set aside for cost recovery under the contract is one of the highest seen.

(ii) The arrangement by which NNPC pays Petroleum Profits Tax on behalf of Ashland is unusual, and it makes this PSC

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25 Ibid p.197.

26 Ashland/NNPC PSC. Clause 6.

the one with the highest tax rate.

(iii) The setting aside of a percentage of production towards the payment of tax is also a departure from the normal practice. Generally, PSCs are subject to corporate income tax, other than in Libya where no tax is payable and in Nigeria, which as we have already seen imposes Petroleum Profit tax of 85%.

Indeed the foregoing are all pointers to the fact that the contract is more advantageous to Ashland than to the NNPC, notwithstanding the fact that the bulk of the proceeds of sale go to the Nigerian Federal Board of Inland Revenue. This was also the conclusion reached by the Tribunal of Inquiry which was set up to investigate an alleged loss of £1.8 (N2.8) billion from the accounts of NNPC with the Midland Bank in London between 1978-79. The Tribunal found no sum missing. Nevertheless, it was highly critical of the clause on the sharing of oil between NNPC and Ashland which it described as "too lop-sided in favour of Ashland". It was of the view that after the operating company (Ashland) took its 50% for the amortization of its investment and operating expenses, payment of royalties (as well as the additional 2% of the actual operating costs as overhead charges) and after setting aside the 55% for the payment of rents, petroleum profits tax etc, the balance left was hardly anything to warrant the application of any ratio whether 35%/65% or 30%/70%.

Because of this, the Tribunal stated further that the PSC "certainly has no benefits whatsoever to the NNPC as it stands today" and added that "Ashland has taken the NNPC and this country for a good ride in the implementation of this contract". Hence it concluded that "the NNPC can therefore ill-afford to continue this contract a day longer".[27]

Furthermore, the right given to Ashland to prepare budgets and programmes with the NNPC approving it, renders the country vulnerable to foreign interests because this could be used by the contractor as a license to be extravagant with the government ultimately bearing the burden. The tribunal of inquiry too commented on this. It observed that,

> "The truth is that NNPC pays 100% of all expenditures incurred by Ashland which is a company incorporated in Nigeria for the purposes of executing the contract between NNPC and Ashland Oil incorporated of USA. They are agents of NNPC but the NNPC contrary to what should be expected from a prudent investor, blindly pays for all types of expenses put up by Ashland without question".[28]

This means that if NNPC wants to be in a position in which it can question or competently assess the expenses put up by Ashland it must take part too in preparing such budgets.

Similarly, there is no stringent restriction in the contract as to how the company disposes the cost oil to either affiliates or independent customers, in a way that could adversely affect the government's interest. For instance, if it is sold at an artificial price that may raise the recoverable costs. Such a loophole is blocked under the

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27 The Report of Tribunal of Enquiry into Crude Oil Sales 1980. Federal Government Press, Apapa. Lagos. p.6. This in my view defeats the whole purpose and advantage of PSC in allocating risk capital to the MNOC.

28 Ibid at p.27.

Indonesian PSCs by two devices: firstly, it is provided that, in the event of Pertamina being able to secure a higher price than the contractor for cost oil, the contractor must either match the price obtainable by Pertamina or permit Pertamina to sell the oil on its behalf. Secondly, the government prohibits contractors from giving discounts or commission to their affiliates. Although the efficacy of this provision depends very much on Pertamina's marketing and ability to identify affiliate transactions, it guarantees Pertamina the right to check and supervise the companies activities. No such right exists under the Nigerian agreement, instead, more authority is even granted to Ashland to sell the cost oil as well as the tax oil besides its own share. The only limitation is that it should be at prices fixed by the NNPC which are periodically fixed for various categories of Nigerian crude. But with the incapacity of NNPC to market all its crude oil, it may not be totally wrong to suggest that the operating companies play important role in determining prices fixed by NNPC, it may find itself in a difficult situation of disposing all its crude.

One advantage that may accrue to Ashland under this arrangement is that, it may earn what is usually termed windfall profits when there is a dramatic increase in prices as it did happen in 1973, 1979/80 following the Iranian revolution and even fairly recently at the start of the Gulf Crisis sparked off by the Iraqi invasion of Kuwait. This may come from its sale of its participants share of the crude after recovering all its expenses but continue to receive that share in the life span of the agreement; thereby earning huge profits for little investment. As Dam too observed,

> "Production sharing agreements have been popular with the oil companies. The companies control their own share of the crude oil and barring any election by the state oil company to take its share in kind, they can control the destination of the state oil companies share ... Most importantly, companies have been able, on the share of their crude oil to enjoy the whole of the price increase in the world market".[29]

A device for avoiding this, is to provide for an increase of the government share whenever prices rise to such an extent as to enable the company earn beyond a specified percentage of profits, say 40- 50%. A similar measure was adopted by Angola in 1979 by the inclusion of a "price cap" clause which retains for the state any excess profits that may arise when an increase in crude oil prices exceeds the rate of increase in company costs.

Finally, in view of all these, the Tribunal recommended that the NNPC/Ashland PSC should be reviewed immediately and the terms made equitable. The government accepted the recommendation. But as the Nigerian PSC requires high level supervision, and, is not as profitable as expected, there was little incentive to renegotiate the contract in such a way that would prove acceptable to both parties. This is moreso when one considers the lack of managerial and

29 Dam, K.W., " The pricing of Northsea Gas in Britain", 13 Journal of Law and Economics, 1970, at p.18 quoted by Hossain, K., in Law and Policy In Petroleum Development. Nichols Publication New York 1979 at p.157.

technical skills and the urgent need for revenue and foreign exchange by Nigeria. The government therefore failed to negotiate any more PSC. Perhaps, the fact that there was only one PSC might have strengthened the government's stance in this regard.

However, subsequent enquiries since have indicated that the Tribunal had not obtained the full facts, and had therefore been too harsh and categoric in its conclusion. It is thought that the Tribunal was probably led to believe that 55% of the total production was assigned to tax oil, with only 5% being subject to the production split.[30] If that was the case, then it is right NNPC had no business pursuing the contract a day longer. Again, others strongly opine that the split between the two parties was 27.5% and also Nigeria through the Federal Board of Inland Revenue receives at least 60% of the total crude oil production.[31] The difficulty has been blamed on the looseness of the drafting of the contract, which differs considerably from the detailed PSCs now found in a number of countries as Indonesia, Libya, Egypt, Peru and others. Thus, the Tribunal's conclusion, and the strong belief that Ashland is getting wind fall profits has meant that to date this remains the only contract of its kind in Nigeria. More on the overall assessment of PSCs is supplied at the end of this chapter.

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30 This information is owed to Omorogbe, Y., " Legal framework for petroleum production in Nigeria." 5 JENR No.4 1987. p.283.

31 Olisa op. cit. p.128 and Omorogbe, op.cit. p.285.

5.4 RISK SERVICE CONTRACT.

Another highly significant addition to new forms of petroleum agreements between MNOCs and NNPC is the Risk Service Contract (R.S.C.). This form of petroleum contract is also called "operation or work contract".[32] The RSC is indeed a variant of the PSC except that the durations covered are shorter, and the operator or contractor has no title to oil produced as exists under a production sharing arrangement.

Normally, "a RSC is an agreement concluded between a state oil corporation acting for the state and a MNOC for the operation of specific aspect of petroleum exploitation by the latter. The state oil corporation holds title to the exploitation rights and concession. No right in any petroleum discovered accrues to the oil company which does however undertake exploration development and production at its own risk".[33] Under such an agreement, the oil producing country or its national company hires the services of the MNOC with the latter assuming the legal status of a contractor. The contractor is obligated to carry out the exploration, development and production operations and the host government may take over and control production operations from the date of commencement of production. In case of commercial discovery, the MNOC is reimbursed for its costs and investments and paid for its services. Thus, the legal consequences of this type of agreement is that the

32 Blinn op. cit. p.82

33 Adedeji op. cit. p.170.

MNOC is granted no mineral rights and that the oil produced belongs in its entirety to the government or its oil company.

Ideally, RSC is based on the premise that an oil producing state needs three essential services from a MNOC- technical, financial and commercial. In other words, it needs oil technology and technical expertise for the development and production of its petroleum resources. And this also means a lot of capital is needed to finance the project. It also needs the services of the foreign company to market the crude oil produced since not many countries have that facility or have properly developed it. But, with the vertical integration and world-wide operations of MNOCs, they control the oil industry including its market. Hence, the need to employ them, so that in the process the oil producing state can acquire the technology as well as gain access to overseas markets.

The earliest RSCs in the petroleum industry were those between the French State Agency (ERAP), with the National Iranian Oil Company (NIOC) in 1966, and the Iraq National Oil Company (INOC) in 1968. Several models of the service contracts now exist in the OPEC states. The common denominator of these contracts is that, the host state is regarded as the owner of the natural resources even after discovery; the MNOC as intimated before being only a contractor and not a title holder. Although in the arrangement which ERAP had with Iran and Iraq, it had right to purchase up to 35/40% of the oil produced at world market prices and to sell the remainder in international market at 2% commission (which was tax free) and the realised proceeds from the sales was to be used by Iran for the purchase of petroleum exploration equipment, products and services from France.[34] In 1971, Peru through its state oil agency (PETROPERU) also signed a RSC with Occidental Petroleum Corporation, a US owned oil enterprise. According to advocates of the Peruvian PSC, the salient advantages of the contract are as follows:

> 1 "The state does not risk or invest capital in the operation, and the area is entirely the responsibility of the contractor.
> 2. The petroleum and the reserves remain at all-times the property of Peru, a situation that is not affected by the payment in kind the contractor receives if he is successful.
> 3. The state is associated with the success from the first day on which it occurs.
> 4. The agreement is simple, clear and straightforward to administer, and thus reduces supervisory and administrative mechanisms to a minimum".[35]

The main characteristic feature of the RSC which distinguishes it from the concession system, joint venture and PSC is that the MNOC provides the technical services and risk capital for petroleum operations in return for remuneration in cash or kind. This way, it is in effect akin to a management contract. Other features of the contract include; the host state oil company is the sole holder or owner of the area under agreement. All petroleum deposits and oil/gas produced are the property of the host state oil

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34 Hossain op. cit. p.165.

35 Cardenes, T., New characteristics of the juridical framework of the exploitation of natural resources in the Latin American context (Paper prepared for the United Nations Centre on Transnational Corporations.) New York 1975 p.341

company at well head. The MNOC, either directly or through a subsidiary, acts as general contractor for the host state oil company and as such carries out, in the name of the latter, all operations necessary for the exploration and development of the oil deposits. Thus, the contractor is not a concession holder or partner, but merely a hired agent. The MNOC is solely responsible for providing all the necessary funds at his own risk. This explains why the emphasis is placed on that risk feature in the labelling of the contract. Unless oil is found in commercial quantities, the MNOC will not be reimbursed for the expenses it has incurred in its unsuccessful search for oil. However, if oil is found, the cost incurred will be debited to the host state oil company's account. The duration of the contract does not exceed 5 years (unlike the 20 years in PSC) and relates only to a single block or specific contract area - a PSC normally relates to more than one contract area.

5.4.1 NON-RISK SERVICE CONTRACT.

There exists too what is often called "pure service contracts" to distinguish them from the usual service contracts which imply the notion of risk taking by the MNOC. Under this kind of agreement which are not so widely applied, the MNOC is paid a flat fee generally related to production for its services. In other words the government or state oil company bears all the exploration risk itself, in effect hiring the MNOC as a contractor to the state oil company. Such contracts have, thus far, only been negotiated by countries with excellent geological prospects such as Saudi Arabia and Venezuela.

In theory, such approach would substantially reduce the return which the government would need to offer to the MNOC, as compared to the case in which the MNOC bore the exploration risk. In Saudi Arabia for example, the MNOCs that make up ARAMCO[36] consortium receive their reimburseable costs plus a fee of less than 20 cents per barrel for providing a full range of exploration development and production services to the Saudi Arabia State Oil Company (PETROMIN)[37] under a non- risk service contract. Another example may be found in Abu Dhabi where the off-shore field of Zakum is operated by the French Company TOTAL for a fee, coupled with the right to buy back part of the production. None of these agreements entails any element of exploration risk.

5.4.2 BACKGROUND OF NIGERIAN RISK SERVICE CONTRACT.

The RSCs currently operating in Nigeria were designed as improvements on the PSCs. It would appear as one writer rightly observed, that the government had sought to introduce the RSC as an improvement on the existing petroleum development agreements in the country.[38] Because in 1979, the government entered into eleven service contracts with ELF, AGIP, AFRICA and NIGUS petroleum

36 This stands for -Arabian American Oil Company which is a wholly American owned company.

37 For a complete account on this see Blinn op. cit. pp. 97-98.

38 Omorogbe op. cit. p.289.

companies, although only that with AGIP has been operational, while with the others oil has not yet been discovered. It is on the NNPC/AGIP service contract that our discussion will be focussed here. No doubt, the general provisions of the rest of the RSCs apply *mutatis mutandis* to the NNPC/AGIP contract with some differences in their specifics only.

5.4.3 DURATION OF THE CONTRACT.

The contract between NNPC and AGIP (AFRICA) Ltd was formally entered into on September 24, 1979 in Lagos. The initial exploration period is three years and is renewable upon at least three months notice given in writing before the end of the initial period. The maximum duration of the exploration period is five years. If during the exploration period the contractor discovers petroleum, a further term of one year is granted to the contractor, if requested in writing at least thirty days before the end of the initial exploration period. It is likely that the purpose of the one year extension is to enable the contractor to complete appraisal, drilling and determine the commercial potential of the discovery. The contract further spells out clearly that;

> "If a commercial field is discovered in any portion of the contract area, contractor shall promptly commence and diligently carry out development and commercial production from such portion. But if contractor shall not have made a commercial discovery in any part of the contract area during the exploration period, this contract shall terminate".[39] (emphasis mine)

39 Clause 3 (5) of the NNPC/AGIP service contract.

5.4.4 RIGHTS AND OBLIGATIONS OF THE PARTIES.

The contract states that Agip must commence work within three months from the effective date and continue to perform the specified exploration work for a specified minimum amount. Drilling of the first exploration well should commence within twelve months from the effective date. And a detailed report of the work done must be made available to NNPC at the end of the exploration period or any renewal thereof.

Furthermore, AGIP must carry out the operations diligently and in a workmanlike manner in accordance with good oil field practice and is subject to all applicable laws, orders and regulations.[40] When required by NNPC, AGIP must furnish NNPC with any and all information, data, studies and interpretations concerning petroleum operations under the contract. AGIP is also under obligation to engage Nigerians to the maximum extent possible in all operations.[41]

It is the duty of AGIP to prepare exploration work programme and budget for each financial year, that is, from January 1 to December 31 of each year. The annual exploration programme and budget must be submitted to NNPC on or before August 31 each year. Thereafter the parties meet not later than November 15 of each year to approve or revise the

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40 Ibid Clause 4 (1) (q).

41 This point is expatiated upon later on under the sub-title Employment, transfer of technology and training of nationals.

programme. Usually the parties agree on the programme and budget with mutually agreed amendments.[42]

Under the contract, NNPC retains title and ownership of all data obtained from the operations conducted by AGIP including all geophysical, geological and engineering data, well logs and evaluations, status reports and all other or information obtained in the performance of the contract. NNPC is obligated to furnish AGIP with all geological drilling, well production data or information in its possession relating to the contract area. NNPC has right of access to the contract area to witness all petroleum operations carried out in the contract area and AGIP is required to provide necessary facilities or such access, so long as the operations are not unduly interfered with. Also, it is the duty of NNPC to assist in every possible way in the dealings of AGIP with government authorities and to ensure that the latter carries out the operations in accordance with Nigerian laws and regulations including those applicable to foreign currency payments.

5.4.5 CONTRACTOR'S REMUNERATION

By and large, all exploration and development costs incurred by AGIP from the effective date of the contract up to the establishment of the first commercial production are consolidated and charged to the applicable field for the purpose of reimbursement to AGIP. This is effected according

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42 Clause 7 (3) of the NNPC/AGIP contract.

to a mutually agreed formula and payments are made in cash or in lieu of cash. The contract stipulates that;

> "All reimburseable expenditures incurred in the contract area other than production costs, shall be reimbursed in quarterly instalments during the repayment period in accordance with the agreed formula:
>
> $$Rq = \frac{EC + DC}{4T} + 1d$$
>
> Where Rq = Quarterly repayment instalment.
> EC = Total exploration costs.
> DC = Total development costs.
> 1d = Product of the outstanding balance of development costs and one-fourth of the annual interest rate as of the last working day of the applicable quarter.
> T = Repayment in years".[43]
>
> It goes further to state that, "All costs and expenses properly made in accordance with the provisions of this contract shall be reimbursed as follows:
> (a) NNPC shall reimburse contractor for all costs of exploration.
> (b) NNPC shall reimburse contractor for all development costs properly incurred by contractor and interest shall be payable thereon at LIBOR rate per quarter.
> (c) Production costs properly incurred by contractor shall be fully reimbursed in Nigerian currency within 30 days of the date of receipt of the relevant invoice by NNPC".[44]

It is evident from above that NNPC must reimburse AGIP from the proceeds of commercial field discovered by it for exploration, development and production costs in accordance with the formula. In addition to the reimburseable costs, AGIP is entitled to quarterly remuneration in accordance with a prescribed formula that takes into account such factors as volume of production per quarter and the market

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43 Ibid Clause 11 (9) (a)

44 Ibid Clause 11 (8).

price of crude oil produced.[45] Generally, the order of payments under the contract include;(a) royalty, (b) Petroleum Profits Tax, (c) Reimbursement, (d) Remuneration and (e) Production costs. That means all customs duties and dues levied on imports and services of the contractor in performing all operations under the contract are reimburseable. And the Petroleum Profit Tax plus royalties levied on production of crude oil are borne by NNPC. AGIP only bears tax levied on its remuneration pursuant to the Nigerian Companies Income Tax Act, 1979 and these are not reimburseable.[46] The Petroleum Profits Tax rate under the NNPC/AGIP service contract is 67.75% for the first five years and 85%[47] thereafter. The rate of the royalty is 20%.[48] And as far as the repayment period is concern, it is stated as quarterly.

AGIP is also given the right to take crude oil produced from the contract area equivalent in value to the total payments due to it from NNPC for reimbursement and remuneration for the relevant quarter.[49] The crude oil taken by AGIP will be in lieu of cash payments to it. Such payment to the contractor will be in accordance with the "market value" for the relevant quarter.[50] Thereafter, all the remaining crude

45 'Market Price' here refers to the weighed average realised price obtained by NNPC in US dollars for crude oil produced from the contract area in that quarter in respect of each quality of crude oil in export market to third parties.

46 This Taxation Act applies to all companies operating in Nigeria both local and subsidiaries of foreign companies.

47 Olisa op. cit. p.116.

48 Ibid p.66.

49 NNPC/AGIP Risk service contract Clause 11 (3).

50 Ibid Clause 11 (12).

oil produced from the contract area except the quantity that AGIP is permitted to take under the contract belongs to NNPC.

5.4.6 TITLE TO PETROLEUM AND EQUIPMENTS.

The contract spells out that NNPC is the sole and unconditional owner of all petroleum, rare gases and any other hydrocarbons whatsoever produced in consequences of the services carried out by AGIP. In addition. all the lands acquired by AGIP for the purposes of operations, and all equipments used in such operations, as well as structure permanently fixed to the property other than fixed assets acquired for temporary use are the property of NNPC and must be transferred to it at the termination of the contract. The contract gives to NNPC first option to purchase all materials, equipment or machinery, other than fixed assets which are the property of NNPC, purchased by AGIP provided such costs have not been refunded to AGIP. Before the purchase takes place, AGIP is obliged to give to NNPC a written notice to exercise the option and NNPC has 60 days within which to exercise the option. The price of the materials and equipment is to be negotiated by NNPC and AGIP.[51]

5.4.7 ACCOUNTING PROCEDURE UNDER THE CONTRACT.

The contract also carries detailed provisions for the rendering of accounts of the operations conducted by AGIP.

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51 Ibid Clause 12 (4).

It requires AGIP to prepare quarterly statements of the accounts, assets and liabilities analysing in full detail all the accounts and expenses actually incurred during any given quarter. Distinct statements are to be made concerning exploration expenditure as well as development expenditure when applicable, with respect to each contract area. Stressing on this need for use of an effective audit system on the part of AGIP, the contract provides that,

> "contractor shall establish an effective internal audit system in accordance with good financial management practice in the oil industry".[52]

AGIP must also provide all explanations and justifications for any items of expenditure included in such statement. NNPC has a period of sixty days from the receipt of the statements to examine and approve them in whole or in part. The two sides will meet, upon notice in writing by NNPC to AGIP, to resolve any disagreement concerning any part of the statement if any, not approved by NNPC.

Inspite of the approval by NNPC of quarterly statements, NNPC has the right upon written notice to AGIP to submit at any time within two years from the end of the financial year in which a quarterly statement of accounts is prepared, the quarterly statements to a competent auditor selected by NNPC. And the expenditures in the quarterly statements approved by NNPC shall be regarded as appropriately incurred.

52 Ibid Clause 16 (2).

If NNPC takes over the production operations AGIP is given the right under the contract to appoint a competent firm of auditors to audit the production accounts kept by NNPC. Within three months from the end of the audit, AGIP shall inform NNPC of the results of such audit. The cost of AGIP's audit will be borne by AGIP.

5.4.8 EMPLOYMENT, TRANSFER OF TECHNOLOGY AND TRAINING OF NATIONALS.

Provisions for the employment and training of Nigerians who will later take over the operations of the oil industry are also contained in the NNPC/AGIP contract. AGIP is under obligations similar to those of Ashland under the PSC regarding the training and employment of local personnel in petroleum operations. For example, one of the Clauses on "Nigerianisation" of the oil industry in the contract requires AGIP to

> "make use of Nigerian nationals to the maximum extent in all aspects of its operations. Only in cases where specialised technical personnel are required and not available from among Nigerians, may the contractor with agreement of NNPC hire non-Nigerians whose level of remuneration shall be approved by NNPC. Provided always that the employment of non-Nigerians shall be subject to the condition that the contractor undertakes to train Nigerians in corresponding specialisation to replace such non-Nigerians in the shortest possible time".[53]

In addition, AGIP is required within six months after the effective date of its operations to submit to NNPC a detailed recruitment and training programme in accordance

53 Ibid Clause 8 (9).

with the Petroleum Decree 1969. The contract is, however, silent on the quality of training and the numbers of nationals to be trained. This means AGIP will conduct the training programmes in accordance with the Petroleum Decree which provides for minimal Nigerian representation of 50-70% for skilled workers and 100% for unskilled workers.

5.4.9 INSURANCE POLICY.

It is pertinent to note that the NNPC/AGIP contract contains detailed provisions on insurance policies to cover all damages or losses to the operations. The contract provides that AGIP shall take out and maintain throughout the period of its engagement, all insurance policies with limits of liability not less than those required by Nigerian laws.[54] In other words, AGIP must maintain, for instance, automobile liability and machinery insurance if aircraft and vessels are used in the operations. Furthermore, AGIP must maintain comprehensive general liability and property damage insurance and insurance covers for assets and materials which, by virtue of the contract, will become the property of NNPC. Each policy is to contain a provision for waiver of subrogation in favour of NNPC. The limit of insurance for each risk covered by any policy is required by the contract to be 'adequate' and each policy should be based on international petroleum practice.

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54 This in effect means that insurance coverages of the oil operations are to be taken out with insurance companies registered and operating in Nigeria.

In addition, all insurance premiums are to be regarded as exploration costs or development costs, whichever is applicable. Policies covering materials and assets located in Nigeria shall be taken out and maintained with a reputable Nigeria insurance company except those policies that AGIP cannot obtain adequate coverage in Nigeria which shall be maintained with a foreign insurance company through the Nigerian Reinsurance Corporation. If AGIP engages sub-contractors, its obligation to maintain the insurances set out in the contract remains unchanged. Whenever NNPC takes over any production operations, it must take out and maintain adequate insurance policy to cover all assets taken over from AGIP and the premiums for such policy will be regarded as production costs.

5.5 ASSESSMENT OF THE CONTRACT.

To begin with, one may express the view that the RSC seems to be the most progressive of all the contractual forms currently in operation in Nigeria. As compared to the traditional concessions, PSC or joint ventures, RSC makes it possible for the state to receive a higher financial return. This type of contract seems to have been signed thus far only in areas of the world where oil companies have considered the exploration risk to be relatively small or the potential discoveries to be high, such as Iran, Nigeria, Saudi Arabia and Brazil, so as to provide a large protected supply and increased revenue. It will be recalled that one of the criticisms levelled against the PSC in Nigeria by the Tribunal on Crude Oil Sales was that it had not been an efficient revenue or foreign exchange earner for the country.

The short duration of the contract might be another explanation why Nigeria opted for the RSC. The five years duration (unlike certain pre 1969 old oil concessions granted for forty years as well as PSC made for twenty years) enables NNPC to resume its ownership interests of the contracted areas free of encumbrances in a much shorter period. This is, of course, where the contract is completed and handed over to NNPC at the end of the exploration period. Fresh arrangements can therefore be made by NNPC in respect of such completed areas after a much shorter time frame than would apply to areas covered by joint venture and PSC arrangements. Further, if no recoverable commercial reserve was discovered within that period the contract would automatically be determined and no further flow therefrom.

Another good aspect of the RSC is that it is limited to just one prospecting block at a time. This will restrict a MNOC's activities to just a single block thereby encouraging it to explore the area quickly particularly if it faces shortage of supply from other sources. In the same vein, the fact that the contract is limited to only one block prevents AGIP and indeed any MNOC from choosing and concentrating on select areas for reasons such as wanting to stay in the host country and maintain a long steady supply.

On the issue of taxes, again, AGIP is treated differently from that of Ashland under PSC. AGIP's status as a mere contractor is thereby underscored, under the contract. While custom duties and other duties as a result of its activities are regarded as reimburseable taxes may not under any circumstances be reimbursed. The tax paid by the contractor is that due on its remuneration under the Company Income Tax Act. As stated earlier the Petroleum Profits Tax and all royalties due on Petroleum in the contract area are paid by NNPC.

It needs be mentioned too that the RSC imposes a lot of restraints on AGIP. For example, it lays down the standards of work to be maintained by AGIP and provides that it may be removed if it fails to maintain such standards. AGIP is only entitled to reimbursement of approved expenditures as specified in the contract from the proceeds of production if attained. Also, it must submit to NNPC for approval annual work programmes and budgets as well as their amendments. Its expenditure must not exceed the approved budget amount. Any contract exceeding a specified amount must be approved by NNPC. It must also submit to NNPC periodic reports and furnish a variety of information and data. And its records and accounts are so many that NNPC can be said to possess a greater degree of control of operations than it has entered before. There is little wonder that this contract is the most favoured of all by NNPC at present.

Worthy of mention too are the provisions on insurance policies contained in the service contract. No doubt, activities of the oil industry involve huge capital investments. Such investments are with respect to equipment, materials as well as the costs associated with pollution control. Inspite of the strict observance of safety rules and good oil field practice, accidents occur in nearly all phases of the industry- ranging from seismic operations, drilling to production. These accidents result in loss of or damage to property, bodily injury and even death to field personnel engaged in petroleum exploration and exploitation. It is therefore necessary and important that such huge investments be protected against loss and the risks to men and materials insured against. At NNPC's insistence, all insurance coverages of joint venture activities as well as the RSC are taken out with the National Insurance Corporation of Nigeria (NICON)- a federal government wholly-owned corporation.[55] A study on insurance coverages in oil operations in Nigeria shows that before January 1976 the MNOCs insured the joint ventureship operations with insurance companies other than NICON. By January 1976, the NNOC (NNPC's predecessor) came out with a directive or statement which stated that NNOC had decided that "its interests in the assets and operations of all our venture partners in the oil industry should be insured with NICON".[56] NNPC as successors to NNOC has since 1977 gone along with the same policy.

Though the directive is for the insurance only of NNPC's interests with NICON, the other parties to the contracts, namely MNOCs including AGIP are said to have found it

55 Etikerentse, G,. Nigerian Petroleum, Law Macmillan, 1985 p.171.

56 Ibid at p.172.

convenient too to insure the entire 100% interests of their ventures with NICON. But because of the enormity of the size of risks (pecuniary) involved, NICON, in turn reinsures certain aspects of these risks with foreign insurance companies.

Even inspite of the widespread accolade the RSC received and hopes raised for a complete control and 100% benefits to Nigeria, it may still not have fulfilled that goal. By leaving management and operations solely in the hands of the MNOCs (contractors), it amounts to an implied investor ownership of mineral resources reminiscent of the old concession regime which it wants to avoid. Some countries, such as Bolivia and Venezuela, have sought to participate in the management of their state-owned oil enterprises by setting up control committees to supervise various aspects of their operations and of their service contracts. A study of these contracts, however, indicates that the transfer of control from MNOCs to host governments is assured not so much by recourse to sophisticated contractual forms and institutional arrangements as by effective supervision of the operations. The study also observed, and rightly too, that "where the supervisory authority lacks the requisite technical, financial, and managerial skills, such supervision tends to be ineffectual and government control becomes largely illusory".[57] Thus, the meaningful way out for NNPC is to intensify efforts and see that the Clauses on "Nigerianisation" and transfer of technology is effectively

57 Cardenes, op. cit. at p.448.

carried out so that once commercial production commences, NNPC may take over production operations in the shortest possible time.

In summation, one could say that the two contractual forms - namely PSC and RSC, are akin to a management contract, particularly in marking the divorce between ownership and management. Indeed, the two can be seen as operating a management contract phenomenon, i.e. an arrangement whereby two parties, one a foreign firm is made responsible to manage and undertake certain technical, educative, executive functions in another firm (a local firm) with or without being an equity holder therein in return for a fee or share in the product".[58]

Of the two, it is the RSC which operates in precisely the same form as a management contract. As in the case of management contract, a RSC covers all phases of a petroleum venture i.e. exploration through production to marketing. When it comes to management aspects the contractor has the sole responsibility for execution of the operations like in a typical management contract. Similarly, the contractor under both contracts are to provide all the funds for and assume all the risks of the petroleum operations at the initial stages. After making a discovery and having appraised its potential the contractor is free in declaring a discovery commercially exploitable or not. If not

58 Sharma, D.D., Swedish Firms and Management Contracts. Uppsala. 1983 p.6 For an exhaustive survey on management contracts in general, see Brooke, M.Z., International Management. A review of strategies and operations. Hutchinson, 1986 especially chapter 4 and Y.P.Ghai and T.C.Chorry, Management contracts and public enterprises in developing countries, A paper prepared for public enterprises in developing countries, Uppsala, 1986.

considered commercially viable, the area concerned is returned to the host state. Also paramount is the issue of remuneration under both contracts. Just as in a management contract phenomenon, a RSC is a simple contract of work wherein the contractor is paid a flat fee for his services.

However, the basic difference between RSC and management contract on the one hand and the other various kinds of petroleum contracts on the other lies in division of the crude oil produced. For example, the concession regime basically gives all the production to the MNOCs in return for modest royalty fees, and the PSC divides production between the host state and the MNOCs after allowing a portion for cost recovery. But the RSC and management contract give non of the production to the MNOC but pays it for its risk production. These fiscal obligations are indeed the fundamental differences between the various kinds of petroleum arrangements.

As a whole, one would discover that the general trend in the Nigerian Petroleum contracts and indeed among other OPEC states has been toward the increasing assertion of national control over the petroleum industry. Thus, from the early seventies to the present, one notices many common elements permeating through the existing patterns of the contracts. In all of them, the sovereign rights of Nigeria to its natural resources are recognised and respected. The role of NNPC as regulator and controller of the operations is clearly stated as is the aim of maximising income for the country and its people through the different taxation systems.

Asante rightly observed that the idea of ownership among the oil producing developing countries evokes the sense of political gratification associated with the attainment of political independence.[59] But just as sovereignty is now acknowledged to be meaningless without economic power, so ownership has little significance in economic terms unless translated into effective control and concrete financial benefits reinforced by sound managerial and technical skills. There is no substitute for technological know-how and the acquisition of basic skills essential to management and operations of the enterprises formerly owned by MNOCs. Thus one may say that what is really important is not the sort of contract a government enters into with the MNOCs that matters, but the contents of it. As Zakariya too commented,

> "It is evident that engaging the services of a foreign oil company is not wrong <u>per se</u> or derogatory of the principle of state sovereignty over natural resources. It is the mode and conditions of such cooperation that call for careful scrutiny and painstaking appraisal".[60]

All types of contracts whether be it called service contract or management contract may be structured so as to yield equivalent benefits for oil producing countries. To this end, the knowledge and skills of the government

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59 Asante op. cit. p.369.

60 Zakariya, H.S., "Sovereignty, State participation and the need to restructure the existing petroleum concession regime," Alberta Law Review. Vol.X, 1972 at p.230.

representatives on the management board of the host oil companies is crucial for purposes of striking better contract deals.

Finally, unless the Nigerian government policy on joint operations is structured in order to effectively deal with the basic problems which I perceive as

(i) lack of oil technological know-how;

(ii) lack of management expertise, given that most representatives on the management boards of the oil companies are not skilled or knowledgeable in the field of petroleum operations, the NNPC will continue to remain a dormant or sleeping partner. Majority ownership of itself, will not give the effective control and active participation needed for integration of the petroleum industry into the Nigerian economy.[61] The issue of transfer of petroleum technology and training of nationals in the Nigerian oil industry, which the author perceives as crucial for the acquisition of management and other such vital skills, is addressed in the succeeding chapter.

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61 The celebrated case of ANACONDA V OVERSEAS PRIVATE INVESTMENT CORPORATION I.L.M. 1975, Vol.14, p.1237, is very illustrative in this regard and thus worthy of mention. Briefly, the facts of the case are in relation to Anaconda's control over mining operations in Chile where the Chilean Government had acquired 51 per cent majority equity ownership in the venture. The question at stake before the Tribunal was whether Anaconda still retained control over the mining enterprises in Chile. After a review of both the operational and management structures of the enterprise, the tribunal concluded that,

> "On the evidence it is clear that from the end of 1969 to 1971, Anaconda retained *de-facto* control in the sense that the operations continued to be carried out in the same way as before, by the same personnel, with a handful of exceptions as before, through substantially the same practical chain of command as before and pursuant to the same plans as before."

For these reasons, the tribunal held that effective control of the enterprise was in the hands of Anaconda despite the fact that it had minority equity ownership.

CHAPTER SIX

TRANSFER OF PETROLEUM TECHNOLOGY IN NIGERIA.

6.1 INTRODUCTION:

As noted in chapters four and five, apart from the traditional concession agreements, most of the petroleum development contracts between the NNPC and the MNOCs contain provisions on transfer of technology. Also contained in these contracts are provisions for exchanging data and information, reversion of equipment on termination of the contract, and use of local goods and services, all of which can be said are aimed at effecting such transfer. Hence, the task of this chapter is to assess the extent to which the Nigerian oil industry possesses a technological capability with respect to petroleum operations. The questions addressed here are whether or not the MNOCs have transferred petroleum technology to Nigeria, and whether Nigeria should rely exclusively on them for effecting the transfer, or should of its own make efforts, devise programmes and create arrangements which will compel such transfer. The relevance of these questions lies in the fact that, despite more than three decades of engaging in the business of oil production, Nigeria has yet not acquired real effective or as Steward and James call it "dynamic"[1] petroleum technology. Acquiring such technological capability will no doubt lead to further

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1 See Stewart,F. and J. James (eds), The economics of new technology in developing countries, London, Frances Printer, 1982. By "Dynamic technology" they mean a sort of technology which tends to give the owner the capacity for innovation and invention. On the other hand, they call the type of technology which is precluded from innovations or inventions "Static technology". Also Lall chooses to distinguish the two kinds of technology by referring to static technology as the "know-how" and dynamic technology as including both the "know-how and "know-why". Lall, S., "Exports of Technology to Newly-Industrialising Countries: An Overview", World Development, Vol.12, Nos.5/6, 1984 at p.475.

increase in the country's bargaining power vis-a-vis the MNOCs and lessen her depence on the latter.

6.2 ASSESSMENT OF NIGERIA'S TECHNOLOGICAL CAPABILITY IN PETROLEUM OPERATIONS.

6.2.1 RESEARCH METHODOLOGY:

In evaluating a country's technological capability in relation to its oil industry and its ability to run it, one needs, as Farrel posits, to disaggregate the industry into its component functions and technologies and then assess the extent to which nationals are capable of carrying out the varied complex functions.[2] Clearly, several problems can result from our attempting to do just that in the instant case. For example, there is the issue of whether the complex of skills or technologies identified is unique to the industry. A problem may be solved in different ways. Lack of a particular technology may not mean that it cannot be substituted with another one which is possessed. Furthermore, evaluating a technological capability on the basis of nationals operating in a particular industry may be misleading. There may be nationals with relevant skills resident in the country but outside of the industry, or even resident abroad and not willing to return. As a result, this procedure could not be used uncomplemented. Thus bearing this in mind, different research methods have been used. The approach adopted is comprised of four different methods with

2 Farrel, T.M.A., "A tale of two issues, Nationalisation, the transfer of technology and the petroleum Multinationals in Trinidad and Tobago." 28 Social and Economic Studies, 1979, p.247.

each method helping to correct the shortcomings in the other.

The first facet of the method applied was to undertake library research into the operations of the oil industry in general with a view to identify those skills or technologies relevant to its crucial functioning. For example, there is no doubt that in an oil refining company, legal affairs and public relations are not crucial functions as compared to the operation of the refining plants. The second facet of the method was to take the case study (Nigerian Oil Industry), and disaggregate it into its component parts with the aid of the NNPC's organisational charts and some data about the MNOCs operating in the country. This facet also could not be relied upon on its own, uncomplemented. Aside from the two reasons advanced above, such an approach ignores the question of whether the existing structure is ideal or desirable, whether alternative technologies can be substituted in different areas or further still, whether the existing industry is efficient or not. The third step involved taking and studying of what we will term as "ideal countries" with more advanced petroleum technology. These include oil exporting developing countries as Nigeria. The study of these countries' oil industries and skill profile did provide some extremely valuable clues as to what might be the model for Nigeria to emulate. A caveat needs to be entered here though. This does not imply that the countries chosen are ideal in the sense that their organisational set up is perfect. Indeed, they may themselves have areas of inefficiency, weakness in certain aspects, etc, and emulating them might mean emulating error. It is simply that such countries are somehow along the path that Nigeria will have to travel and studying them provides us with valuable information about the journey that is ahead for Nigeria.

Finally, the fourth approach used was to take the complex of functions identified under the first method, and then identify and interview experts in some of these areas, asking their advice and opinion with respect to analysing the skill situation of these areas via-a-vis the Nigerian oil industry. This is the most potent of all the methods. It might be wondered why reliance could not be placed on this method alone. Perhaps the reason might be because an expert or specialist working in one area of a company may not have any precise idea as to the industry as a whole. In the course of the research, this problem was confirmed.

In the whole, interviewing people actually working in particular sectors of the oil Industry in course of the research (fieldwork) in Nigeria proved enlightening.

6.2.2 RESEARCH ASSESSMENT

From the information obtained through library research, as required by the first method, a listing of functions into which the oil industry can be disaggregated was determined. This listing forms the subject of Figure 1.

Figure 1.

THE DISAGGREGATION OF THE OIL INDUSTRY INTO ITS SEVERAL BROAD FUNCTIONS.

- Exploration and Development.
- Production.
- Refining.
- Petrochemicals.
- Transportation.
- Marketing and Distribution.
- Projects and Construction.
- Research and Development (R & D).
- Information and Data Processing.
- Tax.
- General Administration (personnel).
- Legal.
- Economics and Planning. and
- Public Relations.

(It is pertinent to state here that many of these can be further disaggregated. But the enumeration here is purely illustrative.)

This method also provided much information on the sort of skill requirements necessary for running the industry independently by nationals. Based on such information, a breakdown of skills comprising the Nigerian oil industry was determined as follows;

(a) The unskilled Nigerians working in different sectors of the industry,

(b) The skilled Nigerians (professionals) in the industry,

(c) The skilled expatriates on full-time employment in the industry.

(d) The skilled expatriates on temporary work permits who are brought in for a brief spell to perform specialised tasks and then withdrawn.

The complex of functions into which the industry was disaggregated and the listings of the skill requirements in relation to such functions, plus the specialised contractor firms who perform a variety of functions in the industry were studied and analysed in conjunction with the information from interviews. The skill deficit under each function was estimated by subtracting the skilled nationals plus the locally based contractors from the total personnel and organisations operating in the oil industry. We will return to this point shortly.

Algeria, India and Mexico were chosen as the "ideal countries" we referred to earlier under the third method. These are the few developing countries which can boast of viable technological capabilities in some sectors of the oil industry. It is not possible to discuss in great detail all the experiences of these countries since this would require an extensive treatise well beyond the scope of this study. However, a brief account on the experiences in these three countries is provided below.

ALGERIA

Algeria is also one of the world's leading producers of oil. Besides oil, the country is also a great exporter of natural gas to the U.S. and Western Europe. Algeria's state-owned oil company, - Sonatrach was established in 1963. The country became a member of the OPEC in 1969. The Algerian Government gained full control of its hydrocarbon resources by nationalising 51 per cent of the shares of all the foreign oil companies operating in the country.

Algeria abolished its old concessionary regime in 1971 and in that year Sonatrach started to be involved in exploration and production activities. Sonatrach entered into several joint ventures with specialised service companies for the provision of services required in crude oil processing, refining and transportation. Of the nine foreign partners, six are from the U.S., two from Italy and one from France. The joint venture agreements are said to have played a major role in the transfer and development of petroleum technology in the Algerian oil industry.[3] This is particularly so because the joint venture partners are obligated to provide adequate training to permit the replacement of foreign personnel by Algerians. In this connection, the proportion of foreign personnel in the different joint ventures varies, for example, from less than 1 per cent in ALFLUID to more than 11 per cent in Aldia.[4] It is worthy of note that in drilling activities Sonatrach holds 79 of the 124 onshore rigs in operation in the country and that they are fully operated by Algerian personnel.

Training is an important element in strengthening the technological capacity of Sonatrach. The number of expatriates working in the Algerian oil industry has been decreasing since the early 1970s, at the end of 1980 they accounted for 3.14 per cent of the total personnel working in the industry.[5] Similar to the Nigerian situation, as we will later discover, this percentage was concentrated in top

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3 See OPEC, Basic Oil Information, 1983, particularly at the section on Algeria, pp.24-37 and Anez, C., " The Transfer of Petroleum Technology to Algeria" (Science Policy Research Unit) University of Sussex. 1975 p.14 (mimeographed).

4 Ibid.

5 Energy Supplies for Developing countries: Issues in Transfer and Development of Technology, U.N. Doc. TD/B/C.6/31/Rev.1, 1980 at p.44.

managerial and high level technical positions within the industry. The training is provided both 'on the job' and by specialised institutes in Algeria and abroad. the most important step concerning training has been to shift from a training system on an *ad hoc* basis to one carried out on a continuous basis. For this purpose, technical training is provided in the Algerian Petroleum Institute, the National Institute for Hydrocarbons and Chemistry and the National Institute for Productivity and Development. Management training exists too in Algeria. This is carried out in specialised institutes in Algiers, Oran and Hassi-Messaoud.[6] Commenting on Algeria, in this regard, a U.N. study held that, the country possesses a local technological capability in equipment supply and scientific support services of the oil industry.[7] This means Algeria has local capability from exploration to development phases which includes services such as drilling rigs, logging services, equipment supplies for oil fields and scientific services e.g. engineering, seismic, computer, sophisticated hydrocarbon equipments, pipelines, etc.[8]

However, in the case of refineries and LNG plants, Algeria has so far relied on turn-key contracts because it lacks adequate indigenous expertise in these areas. At any rate,

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6 See OPEC Bulletin Supplement, Vol.28, No. 51 1987, p.43.

7 Energy supplies for Developing Countries;Issues in transfer and development of technology. U.N.C.T.A.D. 1980 hereinafter referred to as U.N. Doc TD/B/C.6/31. 1980 p.37. See also Khan op.cit p.14.

8 U.N. Doc. TD/B/C.6?31, 1980 Ibid.

it is stated that in doing so, Sonatrach is able to screen and select the process technology and evaluate the specifications presented by the owners of the technologies.[9]

On the whole, one can say that as far as the process of acquisition of oil technology by Algeria is concerned, the stress is laid mainly on the acquisition of operating and managerial capabilities. This is very appropriate because they constitute the basis for building an engineering and a research and development (R & D) capability for Algeria in the future. The next country to be discussed is Mexico.

MEXICO

Mexico and India have developed local technological capability in the fields of exploration, production and refining through their training schemes and R.& D. units. Mexico was specially chosen as one of the ideal countries because it nationalised its oil industry in 1938, and has thus had decades of experience. In addition, it has a relatively well developed petrochemical sector - which is a direction that the Nigerian oil industry is aiming to reach too.

Pemex, the country's state oil company was founded in 1938, the same year that the Mexican Government nationalised the oil industry.[10] Following the nationalisation, Pemex faced almost universal hostility from the MNOCs and their home governments, which attempted to boycott and stifle it from

9 Ibid.

the cradle. Nevertheless, despite such hostility, Pemex survived and in its first three decades built an enviable record in the business of petroleum development. For example, the Mexican Institute of Petroleum (IMP) on which Pemex relies for its oil technology is said to be one of the most technologically advanced in the Third World. Of the 136 technological agreements concluded by Pemex in the 1970-1980 period, only 40 per cent were signed with foreign firms, the rest were with the IMP. It is also reckoned that Mexico devotes about three times more resources to developing its own oil technology than to importing it.[11]

In 1980, IMP had 2,900 employees of whom over half were professionals of different disciplines within the oil sector. In addition, it holds 90 patents registered on refining and petrochemical processes, catalysts and chemical products. In a few areas it has even succeeded in gaining a foothold in world market, as proved by the marketing of a patented technique, 'Demex', in a joint venture with Universal Oil Products of the U.S. This technique was applied in two refineries in the U.S., one in Colombia and two in the Middle East.[12]

While IMP is nearly self sufficient in refining and well advanced in petrochemical sector and in R & D, it is much

10 Gaither, R., Expropriation in Mexico: The facts and the law, 1940, cited in E. Smith et al, "A fifty year perspective on World Petroleum Arrangements", Texas International Law Journal, 1989, p.15.

11 See Baker, G., Mexico's Petroleum Sector: Performance and Prospects , 1984 pp.55-57 cited in D.A. Kimbal, Jr, "Secondary and tertiary petroleum operations in Mexico: New foreign investment opportunities", 25 Texas International Law Journal, 1990 p.425. See also Energy Supplies for Developing Countries, U.N. Doc.op.cit. pp.46-47

weaker in drilling sector and generally in pipeline laying and transportation sector. IMP has concluded technology transfer agreements with foreign firms to obtain technology not available in the country.[13]

Indeed, one can say that in spite of the early set back suffered by Mexico occasioned by the nationalisation, it has achieved two things. First, Mexico has demonstrated that a developing oil producing country could effectively reclaim the right to its oil and mineral resources from foreign control by the MNOCs. Secondly, the country proved that it can develop those resources independently. Although questions have been raised about Pemex's efficiency and its operational standards, no real doubts exist as to its ability to develop mexico's hydrocarbons without external aid.

INDIA

India is the next country among the developing countries which is as advanced as Mexico in oil technology. A country with a per capita income of about $100 per year, India seems like a country whose government cannot afford the risk of exploring for oil on her own, yet thanks to her state oil entity,[14] she has very successfully carried out such exploration at great benefit to the country. To achieve such feat, the country laid great emphasis in the area of R & D. For instance, it is stated that India's state-owned oil

12 The discussion here draws significantly on Tanzer, M., 'Oil Exploration Strategies: Alternatives for the Third World', in T. Turner et al (eds), Oil and Class struggle, Zed Press, London, 1980, p.92.

13 Ibid.

company, the Oil and Natural Gas Commission (ONGC) devotes about 2-3 per cent of its revenues to in-house research activities. Most of the research is conducted by the Indian Institute of Petroleum Exploration, established in 1972 and staffed by 1,500 scientists and technicians.[15] For purpose of promoting further R & D, the country has two other research institutes, namely, the Institute for Reservoir Studies in Ahmedabad and the Institute of Drilling Technology in Dehrahun. As a result of these efforts, India has built up a solid domestic technological capability in petroleum, especially the mastery of drilling and off-shore technologies.[16]

It is intriguing to note how India has acquired a technological capacity in off-shore exploration and production. Briefly, it started when the government awarded two PSCs to foreign oil companies and reserved one area for the ONGC. Under the terms of the contract, the foreign contractors were to subcontract work as much as possible to an Indian firm for the engineering work and to a local manufacturer for the provision of the equipments, while the foreign contractors were to be fully responsible for the quality and delivery schedule of the entire work. At the same time, the ONGC was to develop local capability in the area in addition to the training that the foreign contractors will give to local employees. The result was

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14 India's state-owned oil company is called Oil and Natural Gas Commission (ONGC).

15 See Energy Supplies for Developing Countries, U.N. Doc, op.cit. p.47.

16 For an exhaustive survey on this see, Malhorta, "India's Off-shore oil programme from policy to plans" and "On the development of indigenous capability for off-shore production systems", January, 1978 (mimeographed papers) cited in Energy Supplies for Developing Countries, op.cit p.47.

that the ONGC found a major off-shore oil field (the Bombay High), while the two private companies, after some unsuccessful attempts ceased operations. To develop the oil field, the Indian Government bought what is called a "jack-up rig" which is a simple technology drilling equipment suited for shallow waters up to 250 feet. The rig was built in Japan, and the ONGC hired a U.S. off-shore drilling company to operate it and also to train Indian nationals to carry out work in the area independently in the future. In that way and also through training and R & D efforts India was able to acquire local capability and mastery of off-shore technologies which it even exports today to other countries.[17] The cost of buying the rig and the management and training fees were partly financed by loan from the World Bank and partly by the Government.

In the main, these countries' experiences attest to the fact that commitment to a local technological capability plan and state effort by way of training as in Algeria and Mexico or using R.& D such as India, can yield results and diminish the dependency infinitely on foreign technology.

Next, data on all work permits applied for and granted in the oil industry for the year 1988 were obtained through the aid of interview and a study made of them. (See Table 7.2). This data broken down by company and by function, led to the determination of expatriates on temporary work permits who are brought on contracts to perform specialised tasks

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17 Platts Oilgram News 18th July 1981 p.1. See also M. Tanzer, Oil exploration strategies, op.cit. p.92.

Lists of contractors or specialised independent firms operating in the industry were also obtained from the interview sources. This led to the identification of about 32 firms who perform specialist functions in areas related to the oil industry This listing forms the subject of Table 7.3. The classification of the firms is done into 'local' and 'foreign'. The list allows an assessment to be made of the role and significance of these firms in the industry.

Table 6.1 :

WORK PERMITS IN THE NIGERIAN OIL INDUSTRY,(Nov.1988)

Company	Number Requested	Granted	Refused
1.NNPC	33	33	0
2.ELF	27	26	0
3.SHELL	57	50	7
4.MOBIL	16	16	0
5.GULF	24	24	0
6.ASHLAND	30	15	15
7.TEXACO/CHEVRON	17	17	O
8.AGIP	14	14	0
9.PHILLIPS	15	7	8
10.PAN OCEAN	27	25	2
11.TENNECO	18	18	0

Source: Interview data (Nov 1989)

Table 6.2:

SPECIALISED PETROLEUM CONTRACTOR FIRMS IDENTIFIED IN THE NIGERIAN OIL INDUSTRY. (Nov. 1988)

NAMES	FUNCTIONS	ORIGIN.
1.Schlumberger	Well survey	Foreign
2.Flopetrol	Well testing	,,
3.Dowell	Cementing service	,,
4.Forex	Drilling	,,
5.Baker	Equipment marketing	,,
6.Solus Schall	Driving services	Local.
7.Dresser Nig.Ltd	Mud chemicals	,,
8.Baroid	Equipment Engineering	Foreign
9.A.C.M. Ltd	Repairs and Servicing	Local
10 D.C.P. Ltd	Grinding and Marking	,,
11 Mitsui	Pipeline construction	Foreign
12.Nissco	Depot construction	,,
13.Wigi	Supply of pipelines	,,
14.Granges Hedlund	Tank building	,,
15.C.M.P.	Off-shore construction	,,
16.U.I.E.	Workboat Charter	,,
17.Montubi	Logging and perforating service	,,
18.Seismograph Service	Well velocity	,,
19.U.G.C. Ltd	Seismic Processing	,,
20.Safel Ltd	Data Processing	,,
21.C.G.G.	,,	,,
22.Gearheart Nig. Ltd.	Wireline lodging.	Local
23.Brink Jones	Gravity surveying	,,
24.Zenith Nigergroup	Land surveying	,,
25.Geodetic	,,	,,
26.Whipstock Nig Ltd	Equipment service & rental.	,,
27.Melby Ltd	Mud Engineering	Foreign
28.Marcoba	Well services	,,
29.Venwell Int.	Mud services	,,
30.Welex	logging perforating.	,,
31.Marubeni	,,	,,
32.Spibat Int.	,,	,,.

Source: Interview data (Nov.1989)

Furthermore, data on the distribution of nationals as well as expatriates working in the NNPC and all the MNOCs operating in the industry in 1989 were obtained and studied.(See Tables 6.3, 6.4 and 6.5 below). These staffers were classified into Management, professional and Secretarial cadres. Since these classifications cover the senior staff and professionals in the industry it allows for assessment to be done of what skills are possessed by nationals which approximate what we described earlier on as either dynamic or static technology.

Table 6.3.

EMPLOYMENT STATISTICS IN OIL EXPLORATION COMPANIES AS AT DECEMBER 1989.

Categories	Nigerians	Non-Nigerians
Management	119	151
Professional	1,065	255
Intermediate & Supervisory	1,994	45
Clerical & Secretarial	1,414	-
Skilled Labour	3,268	-
Unskilled Labour	218	-
Others	190	-
TOTAL	8,268	451

Table 6..4.

EMPLOYMENT STATISTICS IN OIL SERVICE COMPANIES AS AT DECEMBER 1989

Categories	**Nigerians**	**Non-Nigerians**
Management	110	173
Professional	394	282
Intermediate & Supervisory	511	88
Clerical & Secretarial	415	-
Skilled Labour	1,797	-
Unskilled Labour	2,357	-
Others	442	-
TOTAL	6,026	543

Table 6.5

EMPLOYMENT STATISTICS IN MARKETING COMPANIES AS AT DECEMBER 1989

Categories	**Nigerians**	**Non-Nigerians**
Management	203	15
Professional	691	5
Intermediate & Supervisory	1,249	-
Clerical & Secretarial	1,493	-
Skilled Labour	989	-
Unskilled Labour	753	-
Others	74	-
TOTAL	5,452	20

Source:1988-89 Annual Report on the Nigerian Oil Industry, An NNPC publication, Falomo Office Complex, Lagos.

6.3. RESEARCH FINDINGS:

The research findings or results will take the form of judgements and comments on each of the areas listed in the disaggregated functions of the industry. At times, the assessment of the country's capability will be made in comparison with situations in the other countries (Algeria, India and Mexico) whose industries were studied. Perhaps, a useful starting point is to begin by commenting on the findings in respect of the exploration and production phases of the industry.

6.3.1 EXPLORATION AND PRODUCTION PHASES.

So far as the exploration and production phases are concerned, it is found that the Nigerian Oil Industry has very little local capability therein. Out of the 10 MNOCs operating in the country, only SHELL, AGIP, MOBIL and GULF have wide range of skills relevant to this phase. It is pertinent to note that these four companies together are responsible for the production of 80 per cent of the country's crude oil.[18] But a considerable number of these skilled personnel are expatriates, who are almost at the intermediate and senior professional cadres. The other companies as well as NNPC are very weak in terms of both numbers and range of professional personnel in these phases. As a result these companies rely a great deal on specialised contractor firms for assistance. When compared with the Algerian or Mexican technological capability in these phases, Nigeria is not up their stages yet, both in terms of number of skilled personnel and experience. Nevertheless, Nigeria has a nucleus of a capability. For example, some evidence is available of Nigeria's capability in the on-shore (land) exploration sector. An NNPC subsidiary, the Integrated Data Services Limited (I.D.S.L.) has two seismic parties who complement the services of the foreign seismic crews in the country. These two seismic parties have been carrying on exploration with commendable achievements in

18 Ibid.

areas reserved for the exclusive exploration and exploitation by NNPC.[19]

However, the country seems weak in off-shore (marine) production. It was observed that the bulk of the work permits granted are in this area, and a wide range of skills are involved in this sector. NNPC, for instance, is heavily reliant on contractors to service this function.

6.3.2 REFINING SECTOR.

The fundamental objective of refinery development in Nigeria is to refine crude oil to meet local demand and to export the excess. Added to this, is the development of indigenous manpower to run all facets of refining operations, and hence augment overall development of the country.[20] To achieve this, four refineries have been constructed and are operating in the country. The breakdown of the installed capacity of these refineries by 1988 is depicted in Figure 2.

Figure 2

Refinery No.	1	2	3	4	
REFINERIES	ELEME	WARRI	KADUNA	PORTHARCOURT	TOTAL
CAPACITY B.P.D.	60,000	25,000	110,000	150,000	445,000
CAPACITY MT/YR.	2,613 870	5,504 400	4,475 400	7,214 402	18,342 543

Source: Interview Data.

19 Interview information held with Manager, Corporate Legal Division NNPC.1989.

20 Progress of Public sector participation in the Nigerian oil industry. NNPC publication, 1986 p.19

Thus, with a total refining capacity of the four refineries at 445,000 barrels per day (b/p/d.) the perennial fuel shortages in the country was reduced, and the level of foreign importation curtailed. The General Manager of Warri Refinery, while commenting on the current state of the four refineries remarked that "only 65 per cent of installed capacity of the refineries is utilised presently, while the projected product supply is hinged on the premise that the four refineries will operate well above 90 per cent".[21] This means that if the refineries operate in their full installed capacities there will be sufficient fuel to meet local demand as well as for export.

In terms of ownership, all the four refineries are 100 per cent state owned. The refineries sector is fully Nigerianised except for occasions where the use of an expatriate technical back-up team is considered absolutely necessary. For example, 80 per cent of the staff of Eleme, Kaduna and Warri refineries are Nigerians and many of them have worked with the foreign consultants and contractors who designed and constructed the new Port Harcourt refinery which was commissioned on March 21, 1989. Although the refineries sector is dominated by nationals, in terms of numbers and range of skills, our judgement is that a national capability exists only to the extent of carrying out the maintenance and operating functions in the plants. The Kaduna NNPC Refinery is a good case in point. In 1988, there were over 49 engineers in the plant, 50 plant

21 Interview information held with Dr. A. Ola, The General Manager NNPC Refinery Warri in December, 1989 at Lagos.

superintendents and 44 assistant plant superintendents. Most of the engineers are nationals, but expatriates control the top positions. Majority of the plant superintendents are nationals. Specialised contracting firms are not very significant here in terms of day-to-day plant operation, but they are in cases where major plant construction exercises have to be carried out. In comparison, the local capability of Nigeria in this sector in relation to Mexico is weaker than in the latter. This is because in Mexico, in addition to the day-to-day operation of the plants by nationals, there exists local contractors who carry out major plant construction works.[22]

6.3.3 PETROCHEMICAL SECTOR

As seen in chapter two, the idea to set up a petrochemical project in Nigeria was first conceived during the 1970-74 National Development Plan period. The plan recognised its importance as a key project which will help transform the economy of the country and provide the much needed base for industrialisation. However, owing to financial and other constraints, the project did not take off until 1979. And a three-phased programme of completion was planned for it. The first and second phases have been completed while the third phase is in its early stages. It is scheduled to be completed by 1995.

The Petrochemical project is also 100 per cent state owned. The feasibility studies, construction assemblage and installation of sophisticated components necessary for the

22 See U.N. Doc TD/B/C.6/31 1980 op.cit.

project is done by foreign construction firms with Nigerians as semi-skilled and unskilled workers.[23] No local capability exists in this new sector, although a nucleus can be said to exist.

6.3.4 MARKETING AND DISTRIBUTION

Until recently, the marketing and distribution of petroleum products was dominated by the MNOCs.[24] These marketing companies determined the volume of products to be imported into the country, and had their own network of depots and retail outlets in certain parts of the country. Local participation in this sector was passive until the coming into force of the Nigerian Enterprises Promotion Act 1977. By this Act,the government through its agency, NNPC, acquired equity shares in the following oil marketing companies;

(1) ESSO - 100% and it was renamed UNI-PETROL.

(2) SHELL -60% and it was renamed National Oil.

(3) B.P. -100% and renamed AFRICAN PETROLEUM (A.P.).

The remaining oil marketing companies too complied with the Indigenisation Decree whereby 40 per cent equity shares were sold to nationals. Thus in this way, local capability began to build up. But this quickly developed when the government in 1984 introduced what is known as "the independent marketers scheme" whereby enterprising nationals are

23 Momodu, K.M., "Transfer of Technology in the Petroleum Industry; The Nigerian Experience." 22 JWT 1988 p.54.

24 The marketing of petroleum products in Nigeria first started in 1907 through SOCONY VACUUM Oil company which marketed kerosine. This later expanded in the mid seventies to include the seven major marketing companies viz;-MOBIL, A.P., TOTAL, TEXACO, AGIP and UNI-PETROL.

encouraged to participate actively in petroleum products distribution.[25] This implies that local staff with real knowledge and skills in this area are available in both domestic and international marketing. (See Table 6.6 above in support of this assertion.) This is unlike the case with Mexico, which has capability with respect to domestic marketing but not in international marketing.

6.3.5 RESEARCH AND DEVELOPMENT. (R.& D)

Generally, present local effort and capability in this area is very poor. There has been talk about the Petroleum Training Institute in Warri to be up-graded to the status of a degree awarding institute for purposes of research but nothing has been done to realise this.[26] Also, the NNPC has a R.& D. Unit, but owing to lack of proper research facilities, it cannot conduct research in a big scale. The most convenient approach had been to refer problems to the foreign technical partners where the research is conducted in the latter's home countries. This is because the R.& D. centres of the MNOCs are mostly situated at their headquarters. Unlike Nigeria, Mexico and India are far ahead in this area. For instance, as mentioned earlier, India through Research projects is able to support the activities of the exploration, petrochemical, refinery pipeline and product marketing divisions of its oil industry.[27]

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25 Interview information held with M.M. Olisa, a top official of the NNPC Joint Venture Department. Lagos. November 1989.

26 Ibid.

27 Petroleum Economist (London) October 1980. p.453.

6.3.6 INFORMATION AND DATA PROCESSING.

Information and data processing is important in any transfer of technology package. It may take various forms, such as records, maps, analyses, field or research data. Exchange of information between parties in the oil industry can prove a useful means whereby the skills and knowledge of one party can be imparted on the other. The mere collection of information is one thing, and the capability to analyse or process such information is another. Without both, information collection is but a passive learning process. Nigeria's national capability in this area is vast. There are clauses in most petroleum contracts between the MNOCs and NNPC which emphasise on exchange of information between the two. Similarly, through the country's membership of OPEC Nigeria gets a great deal of information from deliberations of the Organisation on all issues of common interest to memberstates. Although NNPC is allowed access to information of the foreign partners (MNOCs) as well as from OPEC but such information is of little value if there is no means, namely through R & D capability to analyse and process same.

6.3.7 LOCAL CAPABILITY AREAS.

So far, our findings have been in areas, (except in marketing and distribution) where Nigeria has little or no technological capability. Next, we will focus on areas where adequate local capability exists.

Applying the same data and information based on the methods outlined above, the following areas were adjudged to be areas where some basic capabilities seem to exist. These include;

(1) General administration,

(2) Transportation,

(3) Taxation Unit,

(4) Legal Department,

(5) Economics and Planning and

(6) Public Relations.

What this means is that, in these areas, there exist nationals with adequate skills and knowledge (tools of the trade) who run them or perform the functions required with little or no foreign dependence. It is interesting to observe that most of the skills involved in these areas are those we earlier referred to as 'static' technology. Whereas the skills involved in those areas where there is little or no local capability come under what we called 'dynamic technology'.

Thus, what emerges from the foregoing is that there is an uneven development of the skills of nationals in the industry. And as Farrell correctly argues about a similar situation in relation to the Trinidad and Tobago oil industry, "This is obviously a function of the control of the industry by the MNOCs and the international division of labour created by those corporations which relegate certain activities to the peripheral countries, and retain certain activities exclusively for the metropole."[28]

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28 Farrel op.cit. at p.277.

The case of Nigeria is very illustrative, where activities such as, R.& D., information and data processing, petrochemicals and the design and construction of new plant equipments are almost exclusively controlled from abroad. And after all the statutory and contractual provisions in some petroleum contracts requiring the MNOCs to employ and train nationals, it has merely resulted in the personnel, public relations, legal and services departments being dominated by nationals.

In sum, our findings can be briefly summarised. The country as we saw above appears to have adequate capability with respect to areas of 'static technology'. But there seems to be insufficient capability with respect to the areas of 'dynamic technology. The research findings therefore suggest that adequate static technology exists with some nucleus of dynamic technology - but not across the whole range of functions necessary in running the industry independently over time. On this basis, it is submitted that Nigeria does not at present have adequate technological capability with respect to petroleum operations. It is not enough that it possesses capability with respect to areas of static technology. A concerted effort needs to be made in the area of dynamic technology too if the industry is to operate successfully and independently over time.

The next question left for us to address is the question, whether or not the MNOCs have transferred petroleum technology to Nigeria. It will be recalled that the petroleum industry like almost any other requires a complex or range of technologies for its operation. It will also be recalled that different types of technology across this range had to be combined, and in this regard a fundamental distinction was made between static and dynamic technology. Therefore, transfer of technology in this context has to be understood and evaluated in terms of these two different facets of technology.

No doubt in the fact that the MNOCs operating locally over the years have offered and still do on-the-job training and award scholarships to staff and other nationals for training both in Nigeria and abroad. Inspite of this, the country does not after more than 30 years of involvement with the MNOCs have effective petroleum technology. In 1986, Mr Olorunfemi, General Manager, Economic Research and Corporate Planning, NNPC, made a similar observation that;

> "the country has not developed the capability to manage its petroleum resources by itself; all the crude oil is still produced by foreign operators. Even though some Nigerians who work in the industry occupy important management positions, the key management roles are performed largely by foreigners".[29]

It is not as though the MNOCs have not at all transferred some technology through their various training programmes. They have transferred some dynamic technology but most of it has been static technology. The net result is that the Nigerian oil industry has a highly uneven development of skills. Infact, as the research shows, the country does not even possess the technology which would enable it run the

29 Olorunfemi, M.S., " Managing Nigeria's Petroleum Resources" (December/January 1986) 24 O.P.E.C. Bulletin at p. 25-26. Mr Amu L., Managing Director NNPC says the same in substance, in Platts Oilgram News, New York. 1st September 1981 p.2.

industry independently at the exit of the MNOCs, from the technical point of view. It is only meaningful to talk about multinationals transferring technology if by that the country can expect one day to develop the technological capability to operate its own industry and determine the direction and nature of its development [30] In the case of the Nigerian oil industry, this still remains a dream.

6.4 OTHER SUGGESTED MEANS OF ENHANCING PETROLEUM TECHNOLOGY TRANSFER.

We saw that an almost exclusive reliance is placed by Nigeria on the MNOCs to transfer petroleum technology to the country. We saw too that inspite of this, the country in more than three decades of its involvement with them has not achieved this aim. Now the question arises, should Nigeria continue to rely on these companies alone when there exists other means which can either replace or supplement the role of the latter as "vehicles" for transfer of such technology? Bearing in mind that the MNCs generally, do not find it profitable to assist a transfer of technology for fear of competition and even possible replacement in the market, it is not surprising that the MNOCs in Nigeria are reluctant to transfer petroleum technology to the country. Thus, this clearly suggests, as Beckford puts it, "unless you are master in your own yard, you will wait in vain for foreign multinationals to teach you the tricks of the trade so that you can set up your own shop".[31] This means that concerted effort is needed on the part of Nigeria to assume a

30 Farrel op.cit. p.278.

responsibility for its acquisition of technological capability without relying wholly on the MNOCs.

It will be remembered that efforts made by Nigeria, to develop a local base for absorption of technology have concentrated in the area of manpower and training. National efforts at R.& D. and the creation of an attendant goods and services industry have been minimal. The NNPC, a good medium for realising such local capability has not been utilised to its full potential. Comparative analysis shows that the country is lagging behind several developing countries in this regard. India provides a good example. Although a developing country as Nigeria, it has been able to carry out state operations through its national oil company. The cases of India and Mexico as we saw earlier on are very instructive in this regard.

To reach a similar level, the NNPC would need to explore other means apart from its manpower development strategy in order to strengthen its local capability in the industry. This time, the emphasis must be on acquiring skills in the areas of dynamic technology. The following are suggestions on how the NNPC can strengthen its local capability with little or no reliance placed on the MNOCs as it is at present.

Firstly, through promotion of research and development in the industry. This is one of the areas in the Nigerian oil industry, as we saw earlier, where local capability is weak.

31 Quoted in Farrel op.cit. at p.278.

Creation of a local research capability in this area can help reduce the dependence which the country has on the MNOCs, create a scientific and engineering base, and establish a local technology for the local industry. In addition, R.& D. can boost import substitution which would in turn reduce the foreign exchange paid through royalties under the patent system. Another importance of R.& D.is that it allows for the adaptation of foreign imported technology to local conditions and needs. If a country is to promote R.& D. and other related activities, then an adequate budget should be provided which can support such activities. Because R.& D. programme is usually expensive, it should be supplementary to the manpower training programme.

In some developing countries such as Brazil, India and Mexico, national research and development in the area of exploration technology have been progressing for many years now. Infact, some of these R.& D. institutes, such as the Institute of Petroleum Exploration at Dehra Dun in India and the Institute of Petroleum in Mexico, are acting not only as domestic sources of oil exploration technology, but also suppliers in the international markets.[32]

While still on the issue of R.& D., it is suggested that a Petroleum Research Institute be created in Nigeria. When founded, it can be made to work in conjunction with the Petroleum Training Institute Warri, whenever the latter is upgraded to a degree awarding institute. It can also work in

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32 Energy Supplies for Developing Countries, 1980, U.N. Doc. TD/B/C.6/31/Rev.1, cited in Khan op.cit. p.24.

cooperation with the universities, the NNPC R.& D. department as well as the MNOCs in all matters concerning local research and development. In any interaction the proposed Research Institute might have with the MNOCs, it should be such that it can tap the finely tuned technological capability of the latter.

Secondly, less reliance on MNOCs for technology transfer can occur through cooperation with state oil companies and other public agencies in other countries as well as international organisations in this area. Such cooperation can assume a bilateral, regional or multilateral form. Many instances of bilateral cooperation in this field of petroleum technology abound all over the world. A classic example of government to government cooperation is the agreement concluded between China and Japan in 1979 for oil exploration and development in China under which Japan provided the loans and sophisticated technology needed for such a joint venture.

There are also several examples of bilateral cooperation among developing countries themselves in the area of petroleum exploration and development. Some developing countries possess adequate technological capabilities in certain petroleum related areas. The state oil companies of some of these technologically more advanced developing countries have assisted in exploration and production fields in other developing countries. For example, the ONGC of India has carried out refinery works in Iran, Iraq, Syria and Tanzania. Also PETROBRAS of Brazil has carried out some work in Colombia, Algeria, Iraq and Libya.[33]

Under multilateral cooperation, we have organisations such as the Commonwealth Secretariat, OPEC and the U.N. which have been involved, for many years now, in rendering technical assistance to developing countries in the field of petroleum. For example, the U.N., under the auspices of its agencies like U.N.D.P. and U.N.R.E.C. has helped carry out projects such as conducting a seismic survey for Trinidad and Tobago and Chile. Another good example is the World Bank which embarks on a policy to advance loans to the developing countries for petroleum preliminary surveys and production.[34] Under this policy, once a country establishes that oil exists, capital for development can be easily obtained, since today, oil in the ground is said to be a bankable asset. Although, since 1984, due to objections by the US the Bank's lending policy is influenced by an interest to encourage private, not public investment in petroleum development. The Bank also encourages state oil companies to subcontract to private sector companies, rather than expand their own capabilities.[35] In like manner, the Commonwealth Technical Assistance Programme provides consultancy advice to governments, frequently at short notice and at little or

33 Petroleum Economist (London) October 1980. p.453

34 See generally, Zakariya, H.S., "The World Bank and Petroleum Development in the Third World", OPEC Review Autumn 1983 p.237, and by the same author "Financing Petroleum Development in the Third World: The Role of the Public International sector", 20 JWTL 1986 p.417.

35 See the presentation by the World Bank entitled Promoting Private Sector Petroleum Investments in Developing Countries, a World Bank Objective, July 1, 1986, Honolulu Conference on Petroleum Exploration; Morse, E., Innovative Financing of Petroleum Projects: Options During the Cyclical Downturn, Presentation for 1986 Honolulu Conference;

no cost. It has particularly expertise in economic planning, negotiating mineral exploitation agreements with MNCs, finance and statistics. The programme has professional, technical and managerial specialists who can undertake assignments in any key developmental area where no qualified national is available. Most of its 300 experts come from Commonwealth developing countries.[36]

The third and final suggestion is to identify those areas of technical service which the MNOCs are not able to provide except through private specialised firms and then hire the services of the latter directly. As a U.N. study has noted, most of the relevant technology is owned by such firms.[37] Therefore, it would be better to approach them directly, in those areas a country is interested, without the help of intermediaries. This, I belief, can help reduce cost as well as provide a contract which is more meaningful to both parties.

In conclusion, this research has demonstrated that after more than 30 years of control of the Nigerian oil industry by MNOCs local technological capability still does not exist in the industry. Although today, majority of workers in the industry are Nigerians, yet there has been no real effective

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and Mikdashi, Z., "Oil Funding and International Financial Arrangements", 9 Natural Resources Forum, 1985,pp.283-291.

36 See Commonwealth Organisations. A publication compiled by the Information Division Commonwealth Secretariat, Marlborough House, London 1990.

37 Examples of such specialised firms include - Baker International, Dresser Industries, Halliburton, Hughes Tools, Schlumberger and Smith International. With the exception of Schlumberger which is Franco-American the rest are all U.S. firms. For a fuller account see, Energy Supplies for Developing Countries. U.N. Report TD/B/C.6/31/Rev 1 1980 p.12.

transfer of technology. No doubt, what will prove beneficial in the long run to Nigeria is the acquisition of what we described in the study as "dynamic technology". It is only through this that the country can greatly improve her bargaining position and eventually gain control over its petroleum industry. Technology cannot be transferred on a platter of gold to Nigeria, and neither can it be effected through a purely legal approach. It can only be obtained through a more active involvement in the oil industry. Exclusive reliance on MNOCs alone without this determination will have the same effect.

CHAPTER SEVEN

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS.

This concluding chapter is intended to serve two aims: First, it is an attempt to bring together the strands of the different chapters in an effort to appraise what has been observed in the study. Secondly, in the light of such observations, to project what the future posture of Petroleum contracts in Nigeria might look like, what that also means for the economic growth of the country and to make recommendations.

From the outset, it would be plausible to recall the main thrust of the study as outlined in both the abstract and introductory chapter. The thrust of the study is to analyse the petroleum development contracts between Nigeria and the MNOCs against the background of the foreign investment and petroleum policies of Nigeria and changes in the international oil scene. This is done with a view to determine whether such contracts strike a balance between the contrasting interests of the parties. It will be remembered from chapter two that while some of the policy objectives of Nigeria in embarking on oil exploitation business are, among others, (a) to maximise her foreign exchange earnings from the resource, (b) to create employment opportunities and (c) to train her nationals to acquire technological know-how in petroleum operations, those of the MNOCs is mainly to secure raw materials and markets to which they can sell for profits their surplus technological and managerial expertise. It is against the background of these conflicting interests that the study sought to analyse the petroleum contracts in Nigeria to view how they safeguard the interests of the parties. It is the overall finding of the study that inspite of all the ascension by Nigeria on the 'learning curve' and her consequent improved bargaining position vis-a-vis the MNOCs, attempts by the country to achieve all her desired interests, the required level of success has not been attained. For example, one finds that after more than three decades of engaging in petroleum operations the country is not capable of assuming control over its oil industry. This, as the study reveals, is mainly because the petroleum contracts and some Government policies towards development of the hydrocarbons are not adequately designed to facilitate local control and full participation as well as to have an effective transfer of oil technology. Therefore, the study in this part and in the main body makes recommendations and proposes revisions which would change the status quo.

From the overall discussions in the study, some deductions can be made about not only the petroleum contracts' regime but also the political and socio-economic ramifications of the position of oil in Nigeria's economy. A summary of these deductions and recommendations is provided below as follows:

7.1 PETROLEUM AND NIGERIAN ECONOMY.

It is shown in chapter two of the study that for the past three decades, the Nigerian economy has been heavily dependent on oil to the neglect of all other sectors such as agriculture and indeed it will continue to be so for the immediate unforeseeable future. No doubt, in the long-run there is the high possibility of oil being substituted for by other forms of energy currently being explored and developed in the industrialised nations. Before that happens, it would be a prudent long-run policy for Nigeria to spend its large oil revenue in developing a viable non oil sector with the hope that such sector would eventually be able to stand on its feet and by that minimise the country's dependence on oil. And as we noticed, the country has a large non-oil sector. It has large and viable agricultural and industrial (manufacturing) sectors which eagerly await attention and are impetus for growth and development. The importance of such a long-run policy cannot be over-emphasised for Nigeria. For it is unfortunate that inspite of the current wealth from oil, the country is still poor and underdeveloped. Furthermore, it has been seen that the oil industry has not been properly integrated into the overall economy of the country to the extent that is required to lead to the country's political and socio-econmic development. It goes without saying that so long as the oil industry continues to be controlled by the MNOCs, the full potential of the industry cannot be realised by the country. Only the effective control of the industry by Nigeria would make easier the task of integrating the oil sector with the other sectors of the Nigerian economy and minimise the leakages of the earnings from oil.

7.2 ISSUES OF OWNERSHIP AND CONTROL.

It is evident too from chapter two of the study that the question of ownership of the hydrocarbons in the country is now undisputably vested in the Federal Government of Nigeria. This position is not only spelt out in the constitutions of the Federal Republic of Nigeria and other statutes (local and international), but one also notices traces of this affirmation of absolute ownership in the host state permeate through the existing patterns of the petroleum contractual arrangements. And the exercise of such ownership rights by Nigeria over her hydrocarbons are recognised and respected by the MNOCs. In other words, foreign majority ownership is now merely a shadow of the past in Nigeria as well as in other oil producing nations. It is pertinent to note that developments in this field have been emulated by other producers of mineral resources, e.g., among members of the International Bauxite Association and the International Council of Copper Exporting Countries.[1] But it is a commonly held wrong notion to equate ownership to control. For instance, in spite of Nigeria's majority ownership in the joint venture participation agreements the foreign oil companies, being the sole operators of these ventures, have the ultimate control over these ventures. This example vividly demonstrates how despite majority ownership, which is usually insisted upon by developing countries, control can be wrested from them, particularly by MNCs. It is therefore imperative that to be able to exert full control over its oil industry, Nigeria needs besides ownership, the necessary technological and managerial know-how in the field of petroleum.

1 See Centre for Development Planning, Projections and Policies, Department of Economic and Social Affairs, U.N. Secretariat, U.N. Doc./A/9716, 1980,P.5.

7.3 REORGANISATION OF THE NNPC.

Another important point which came out of chapter three of the study was about the reorganisation of the state oil company, NNPC, into a commercially oriented integrated international oil company whose mission is to profitably embark on petroleum development in competition with the MNOCs. In other words, NNPC as it is today is not different from all other private oil companies in Nigeria as far as their ultimate goal, which is profit making, is concerned. NNPC's new image, as we saw, is designed to give it, and, ultimately, the country a robust posture to withstand any shock of downturn in business fortune from within or outside the Nigerian economy that may threaten the development of the national economy in the future. This, in the author's view is a commendable step in the right direction because a powerful and capable NNPC will no doubt mean a better position for Nigeria to compete equally with the MNOCs to derive maximum benefits from its oil industry. This is because the NNPC can only operate efficiently within an atmosphere which is devoid of any bureaucratic bottle-necks associated with the civil service system. Moreso, it is the NNPC that will in the future replace the MNOCs and allow the country to no longer develop its hydrocarbons from a position of dependency. However, as also earlier advocated in chapter three, I wish again to reiterate the point that whenever the NNPC Act 1977 is to be revised to accommodate these changes, the provisions relating to the appointment of members to the Boards should be altered to provide that appointment to the Boards will be on the basis of members having some knowledge or experience in petroleum matters.

7.4 DEPENDENCY FACTORS IN NIGERIAN OIL INDUSTRY.

Furthermore, it is clear from the study that despite over three decades of the business of oil exploitation in Nigeria, the country's oil industry is still largely dependent on the MNOCs in terms of technological and management expertise. It was seen in chapter two that the Nigerian oil industry has been from its inception organised and controlled by the MNOCs who manage and maintain an international network which covers all aspects of the petroleum business from up-stream to down-stream operations. For these oil companies, Nigeria is simply one link in a chain. The organisation and development of each subsidiaries of these MNOCs in Nigeria are basically in response to the world-wide considerations of these companies. The consequence of this on the country is that Nigeria has not been deriving maximum benefits from its oil industry. Of the three major contributions that the investment in oil development is expected to bring to the host country- employment opportunities, foreign exchange and technological transfer and local capability- the oil industry in Nigeria has made significant contributions to only foreign exchange earnings for the country. Despite the importance of the industry to the economy of the country, only as little as less than 1 per cent of the total labour force (of a country with the population of 88.5 million) are employed in this sector. Although granted that the petroleum industry *per se* is not a labour intensive industry, the lack of intersectoral linkages of the industry with rest of the local economy (which would have led to more job opportunities) is what has led to such situation. Also, as seen in chapter six, the efforts of the MNOCs to transfer technological capability to Nigeria leaves much to be desired. The analysis of chapter six showed that although the country does possess some oil technology, the kind of technology it has got is 'static technology' as opposed to 'dynamic technology'. Also, the chapter attempted to ask and answer the question why has Nigeria after all these years of relying on the MNOCs to effect the transfer of petroleum technology to the country, such transfer has not materialised.

7.5 FUTURE TRENDS OF PETROLEUM CONTRACTS.

From the perspectives of the petroleum contracts, it will also be recalled from the discussions in chapters four and five that the terms of the traditional concession regime which operated in the early days of oil development were unfavourable to Nigeria. Nigeria modified the terms of these agreements through the promulgation of the Petroleum Decree 1969. It was this Act as well as through OPEC's influence which led to the introduction of the policy of participation by Nigeria in the business of oil exploitation with the MNOCs. We further saw that such quest for Nigerian government's participation in petroleum development operations has continued unabated, and lately assumed wider dimensions, culminating in such contractual forms as PSC and RSC. This mainly came about to borrow Moran's expression through Nigeria's ascension on the 'learning curve' as a result of her experience over the years and through her membership of OPEC. Consequently, the role of the MNOCs which was that of an "autocrat" under the traditional concession regime and subsequently was transformed to that of a "partner" under the joint participation agreements, has finally been reduced to more modest one of a "contractor"-provider of technical and management services.[2] Laudable though the transitions may sound, after three decades of direct involvement in oil development activities with the MNOCs, Nigeria is yet to manage or operate its oil industry by itself. As a result, today a great quantity of petroleum in Nigeria is developed under joint participation agreements under which the NNPC is a non operating partner and the MNOCs are the sole operators. Even the existing PSC and RSCs have done little to improve the country's position from that under joint participation agreements. Although they contain terms that are more favourable to the country in matters of assertion of ownership over the hydrocarbons and taxation, they are not different from the traditional concession and joint venture agreements in the sense that the MNOCs are still the sole operators under these contracts. The NNPC's role under these contracts is that of an approval agency; its participation as an operator in the joint venture operations is discountenanced. In a sense, it is kind of reversal to the traditional concession regime under which the concessionaire supplied the risk capital, technology and managerial expertise with the host country acting as a mere

2 This expression is owed to Zakariya, H.S., "New Directions in the search for and Development of Petroleum Resources in the Developing Countries", op.cit at p.568.

"tax collector." As such, a framework in which the NNPC can participate also as a co-operator in joint operating agreements with the MNOCs needs to be introduced into these contracts. Furthermore, it is recommended that less reliance be placed on the MNOCs as the only "vehicles" for the transfer of oil technology to the country. In chapter six, I adduced several recommendations on how Nigeria can strengthen her local capability (as well as bargaining position) in respect of "dynamic technology" with little or no reliance placed on the MNOCs. They included such measures as promotion of R & D efforts through establishing a Petroleum Research Institute in the country, cooperation with state oil companies and other public agencies in other countries as well as international organisations working in the area. The kind of cooperation envisaged here can be either bilateral, regional or multilateral. All these alternative sources are quite capable of effecting the transfer of technology because as seen in the study, the MNOCs do not actually own the technology required for petroleum operations. The fact, as can be recalled, is that in today's world, the oil technology is owned not by the MNOCs, but by private specialised firms which sell their services to anyone, usually for a flat fee and not for a share of the profits. While it is true that in the oil producing developing countries these specialised firms work to a large extent for the MNOCs, this is so because the governments of these countries usually leave the control of their oil industries to the MNOCs. Otherwise, by and large, any government which is willing to engage the services of these firms directly can obtain them without recourse to the MNOCs. Although, one is also quite aware of the constraint most developing countries face in terms of not having the capital to pay for the services of these specialised firms and therefore they rely on the MNOCs who can afford to do so. But with the current World Bank's policy of granting loans for petroleum development projects to countries who cannot afford the risk capital, a developing country does not need to look up to the MNOCs for capital any more. Moreso, given the importance of oil in the world today, aside from the World Bank, such loans can also be obtained from international agencies, commercial banks, regional agencies or countries that are anxious to secure future supplies of oil.[3]

Through such direct contact with these firms, a country can also negotiate technology transfer agreements with them and in the long-run acquire the desired technological and managerial capability to run the industry independently. The technical services agreement concluded recently between NNPC and BECHTEL, as seen in the study, offers a ready example of this process. According to the agreement, BECHTEL is to transfer technical know-how to NETCO (one of the new NNPC subsidiaries) within the span of 10 years. Without appearing to sound too optimistic, I believe that whenever that goal is achieved, be it in a decade's time or more, the NNPC will then be capable of engaging in the development of the

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3 For fuller survey, see Walde,T., "Investment Policies in the International Petroleum Industry - responses to the current crisis," in N. Beredjick and T. Walde, Petroleum Investment Policies in Developing Countries, op.cit. pp.18-22; and Mikdashi, Z., "Oil Funding and International Financial Arrangements," 9 Natural Resources Forum 1985, p.283.

country's oil with little dependence on the MNOCs. When the NNPC reaches that stage the posture of the petroleum development contracts in Nigeria, I believe will also adjust with the NNPC playing greater role as the sole operator or jointly with the MNOCs to reflect such status. This will also immensely improve the country's bargaining power with the MNOCs. Whichever form such contracts may assume, their major point of departure from the present ones will be that the NNPC will act as the operator while the MNOCs as mere "purchasers" of the oil or they will be engaged from time to time to perform specialised duties in return for a fee.

Yet another finding of the study in relation to petroleum contracts is that, all the contracts had no mechanisms for renegotiation of the terms of the contracts whenever such need arises. As a result of such *lacuna,* it has been noticed that the common practice in Nigeria in cases of renegotiation has been done either through passing a Government Notice or by promulgating a new legislation to that effect. It goes without saying that such practice will be easier if renegotiation clauses were inserted in every contract.

The debate in support of this notion is that changing economic situations especially in view of the unstable nature of the present international economic order, provides a valid justification for a host country to renegotiate its contracts with the MNOCs. In view of the well known principle of "rebus sic stantibus," one can but agree that renegotiation clauses have legitimacy and should be insisted upon by Nigeria in all her contracts with MNOCs. It is further recommended that while drafting these contracts, certain minimum operational conditions affecting the transaction be inserted into these contracts, by that making renegotiation automatic on the fulfilment of these conditions. This will have the effect of bringing such clauses in line with that of *force majeure*.

7.6 THE ROLE OF OPEC.

As a study of an OPEC oil producing country, it would be a gross oversight not to mention in this concluding part the important role such Organisation had played in relation to the subject matter of this study. It will be recalled from the discussions in chapters two and three that OPEC was founded in 1960 and Nigeria became a full member of the Organisation only in 1971. Since its formation, OPEC has had great impact on its members as well as on the international petroleum industry. It has been described as the main strategic vehicle for its members to regain sovereignty over their natural resources.[4] It did so through its chains of resolutions in which it encouraged the growth of participation and third generation agreements i.e. such contracts as PSC and RSC.

Perhaps the greatest impact which OPEC has had on its members is the wresting away from the erstwhile oil "majors" the power to determine levels of oil production, as well as prices of oil in the world oil market. The assumption of such powers by OPEC changed the structure of the international petroleum industry. In the pre-OPEC days, the

4 See Gordon, R.L., An Economic Analysis of World Energy, MIT Press, 1981,p.227.

world oil market was 100 per cent controlled by the "majors." OPEC's arrival on the scene changed all that, such that today, the "majors" are relegated to the background. Strategic decisions of the international petroleum industry have now become the decisions of OPEC and governments of non-OPEC oil exporting countries, because host countries have now improved their bargaining positions with the MNOCs. However, the most important strong bargaining points they are left with at the moment are in the areas of oil technology and managerial expertise.

We also saw that despite OPEC's role in the international petroleum industry, opinions are divided in Nigeria over the country's continued membership of the Organisation. As I said before, it is my firm conviction that Nigeria should remain in OPEC. The main argument of the opposition side is that when Nigeria opts out, she can produce and sell more than twice her presently allotted OPEC quota, which invariably means more foreign exchange for the country. Doing so, in my opinion, will not make Nigeria better off than she presently is, especially in terms of her interest in the long-run to become less dependent on the MNOCs. And by less dependence here one means Nigeria getting the necessary technological capability to operate her oil industry independently of the MNOCs. In that way, the country will retain full control over the development of her hydrocarbons from exploration to marketing stages and get

100 per cent of any oil found. One writer simply calls this the "100 per cent state-control role."[5]

In the decades ahead, I believe, things will change for the better in that, for instance, some OPEC members may make a breakthrough in acquiring oil technology. When that happens, all membercountries will benefit from it as members are known for their practice of emulating each other. It is for this and other reasons which were adduced in chapter two that I believe Nigeria should continue with her membership of the Organisation.

In the final analysis, in this day and age, just as war is too important to leave to the military, so oil is too important to leave to the MNOCs. This fact is recognised by the developed and developing oil exporting countries alike where their governments have set up integrated state-owned oil companies to do everything from exploration and producing oil to operating refineries. If the ultimate goal of Nigeria is to have all her oil resources used for the maximum benefit of her teeming populace it is extremely important that the country assumes full control over the exploitation of such vital resources because as Nigeria's Minister of Petroleum recently noted:

> "Petroleum is the only commodity, which, in commercial quantities and properly utilised, will attract capital investment, bring sustained revenue earnings, import other downstream projects and give employment opportunities as well as diversify to establish linkages with Agriculture and other Industries

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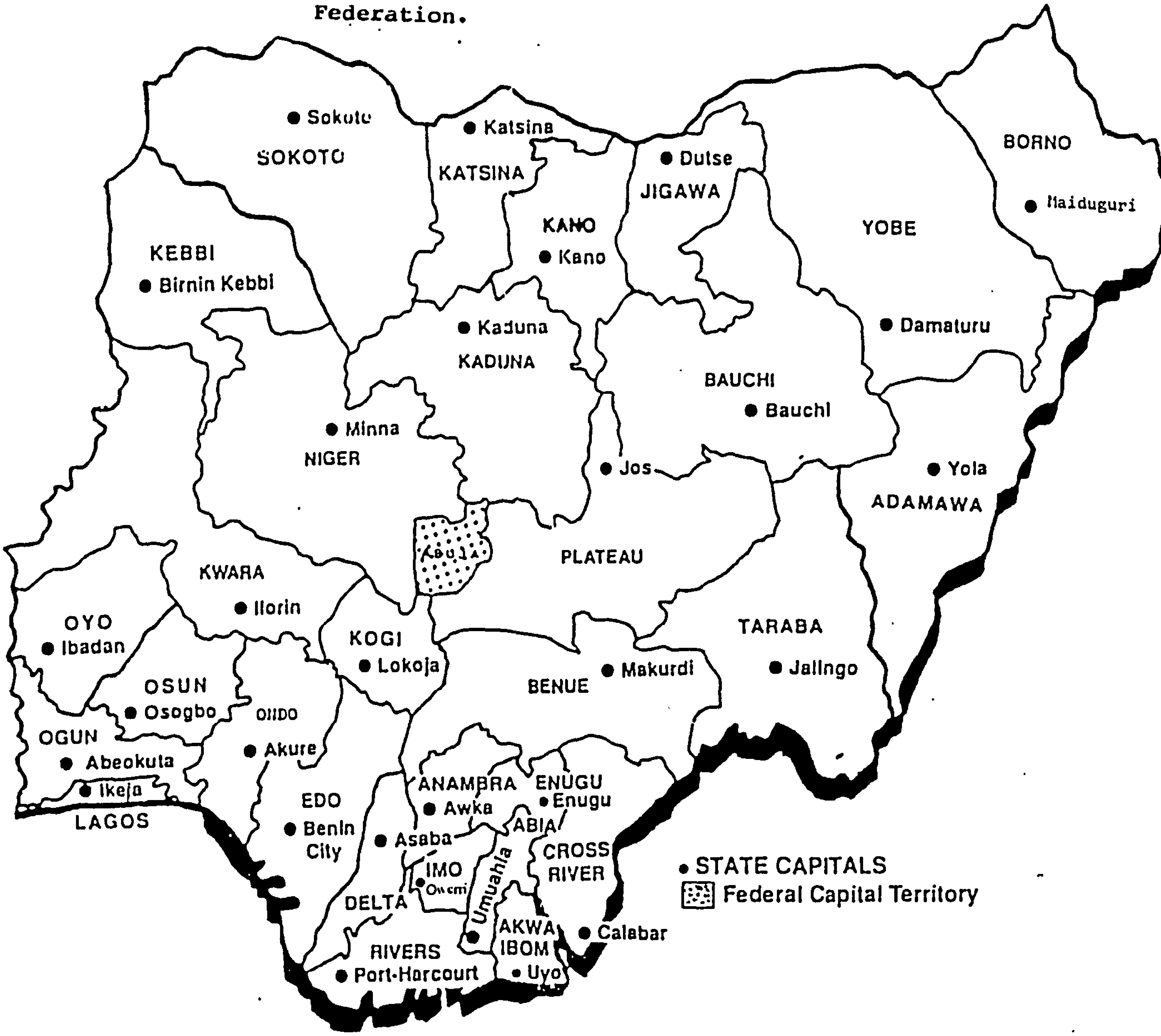
5 Tanzer, M., "Oil Exploration Strategies: Alternatives for the Third World", in T.Turner and P.Nore, (eds) Oil and Class Struggle, Zed Press 1980 at p.90.

and promote the acquisition of science and Technology."[6]

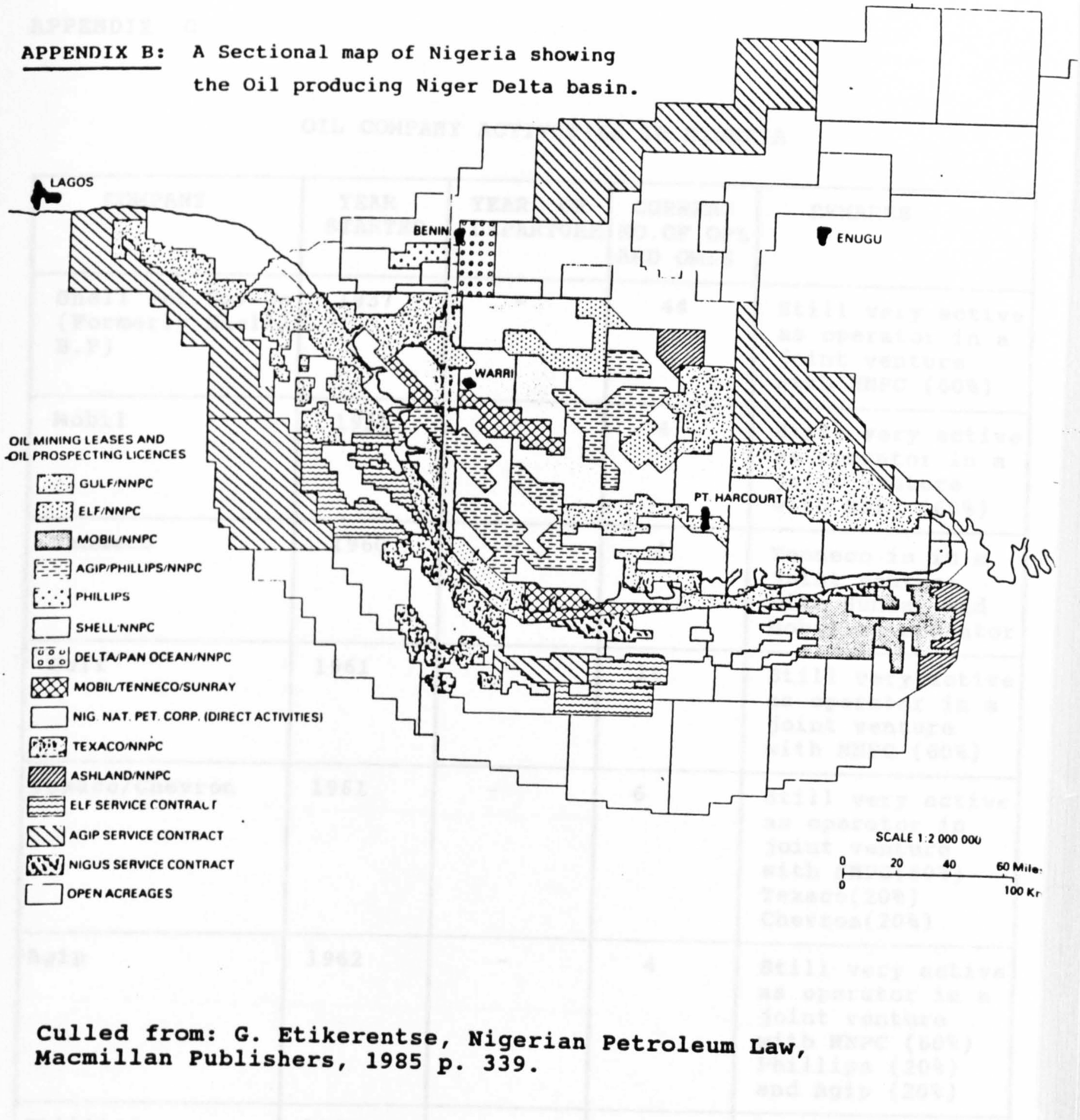
6 Prof. Jibril Aminu "Oil Development and Africa." Address delivered at the Royal Institute of International Affairs, in Chatham House, London 29 October, 1991.

APPENDIX A: A map of Nigeria showing the thirty States of the Federation.



Source: Nigerian Information Service Centre, Nigeria High Commission, London. January 1992.

APPENDIX B: A Sectional map of Nigeria showing the Oil producing Niger Delta basin.



Culled from: G. Etikerentse, Nigerian Petroleum Law, Macmillan Publishers, 1985 p. 339.

APPENDIX C

OIL COMPANY ACTIVITIES IN NIGERIA

COMPANY	YEAR STARTED	YEAR OF DEPARTURE	CURRENT NO.OF OPL AND OMLS	REMARKS
Shell Pet.Dev Co (Formerly Shell/ B.P)	1937	-	44	Still very active as operator in a joint venture with NNPC (60%)
Mobil	1955	-	4	Still very active as operator in a joint venture with NNPC (60%)
Tenneco	1960	-	4	Tenneco is in a joint venture with Sunray and Mobil as operator
Gulf	1961	-	16	Still very active as operator in a joint venture with NNPC (60%)
Texaco/Chevron	1961	-	6	Still very active as operator in joint venture with NNPC(60%) Texaco(20%) Chevron(20%)
Agip	1962	-	4	Still very active as operator in a joint venture with NNPC (60%) Phillips (20%) and Agip (20%)
Phillips	1962	-	1	Operator and sole assignee of one block
Elf (formerly SAFRAP)	1962	-	4	Still very active as operator in a joint venture with NNPC (60%)

Esso Exploration	1965	1965	1	-
Union Oil	1967	1970	-	-
Great Basin	1968	1970	1	-
Niger Oil Resourses (formerly Japan Petroleum)	1970	1978	4	-
Niger Pet. Co/ Deminex	1971	1976	4	-
American Occidental	1971	1974	4	-
NNPC (formerly NNOC)	1971	-	48	NNPC currently takes major exploration programmes in its acreages
Pan Ocean (formerly Delta)	1972	-	2	Still very active as operator in a joint venture with NNPC (60%)
Henry Stephens	1972	1977	1	-
Ashland	1973	-	2	The two blocks 100% held by NNPC Ashland is a producing sharing contractor to NNPC on the two blocks
Agip Energy and Natural Resources (AENR)	1979	-	6	Owned 100% by NNPC. AENR operates under a service contract arrangement in one of the blocks (OPL 472). others have been relinquished in 1984 as per the terms of the contracts.

ELF Aquaitaine (Nig) Services (EANS)	**1979**	**-**	**2**	**EANS shot over 16,000 KM of seismic lines and drilled seven wells in the three OPLs without any discoveries. The service contract on these blocks expired in 1984.**
Nigus Petroleum Nigeria	**1979**	**-**	**2**	**Nigus shot about 680 KM of seismic lines but drilled no wells before the service contracts expired in 1983.**

APPENDIX D.

OIL EXPLORATION LICENCE BETWEEN THE GOVERNMENT OF NIGERIA ON THE ONE HAND, AND SHELL OVERSEAS EXPLORATION CO. LTD. AND D'ARCY EXPLORATION CO. LTD. ON THE OTHER, DATED 16 JULY 1949

THIS DEED made the Sixth day of JULY 1949 BETWEEN HIS EXCELLENCY HUGH MACKINTOSH FOOT, Companion of the Most Distinguished Order of Saint Michael and Saint George, Officer of the Most Excellent Order of the British Empire, Officer Administering the Government of Nigeria (hereinafter referred to as the Governor of Nigeria shall include the Governor and Commander in Chief in and over Nigeria and any Officer for the time being Administering the Government of Nigeria) OF THE ONE PART and the D'ARCY EXPLORATION COMPANY LIMITED Jointly (hereinafter referred to as the Licensee) OF THE OTHER PART :

WHEREAS the Licensee has applied to the Governor for an Oil Exploration Licence in respect of the lands specified in the Schedule hereunder written (hereinafter referred to as "the said lands") :

NOW THIS DEED WITNESSETH as follows :-

1. In consideration of the sum of one hundred pounds which has before the execution hereof been paid to the Accountant-General on behalf of the Governor right and licence in respect of that area of the said lands being within the Trust Territory and the sole right and licence in respect of that area of the said lands being outside the Trust Territory are hereby granted by the Governor to the Licence for a term of three years from the 1st of January, 1949,

subject to the rights of private owners of the surface and subject to the restrictions conditions and provisions hereinafter contained to explore and search the surface of the lands described in the Schedule hereunder written petroleum and for that purpose to make geological, geophysical and topographic examinations and to dig and turn up the surface of the land and drill geological information bore holes which shall not except with the consent of the Director of Geological Survey exceed a depth of five hundred feet, reserving nevertheless to the Governor full power and liberty at all times to enter into and upon and to grant or demise to any persons whomsoever liberty to enter into and upon such Crown land and land declared to be native land under the Land and Native Rights ordinance as may be included in the said lands for all and every purpose other than that for which the sole right and licence under this Licence is granted and subject otherwise to the rights of the License under this Licence.

2. Subject to the rights of surface owners, the licensee may erect and bring upon the said lands such temporary huts, sheds and structures, steam and other engines, machinery and conveniences, chattels and effects as shall be proper and necessary for effectually carrying on the operations hereby licensed and subject as foresaid the Licensee shall be entitled at any time to dismantle and remove the same.

3. The Licensee shall before commencing any operations in the said lands furnish to the Director of Geological Survey the name and address of the Manager resident in the locality of the said lands under whose supervision such operations

are to be carried on. Any notice which the Governor or any person authorised by him is in accordance with the term of this Licence required or entitled to serve upon the Licensee shall be sufficiently served if the same shall be delivered or sent by post to such Manager at such address.

4. The Licensee shall with all reasonable despatch commence to examine geologically and/or by geophysical methods the said lands and shall during the subsistence of this licence continue with due diligence to carry out such geological and/or geophysical work as may be necessary to determine the structure of the said lands.

5. The Licensee shall pay (a) to any persons in lawful occupation of the said lands, such compensation for disturbance of surface rights, and (b) in the case of land within the said lands, which is either Crown land nor land within declared to be native land under the Land and Native Rights Ordinance to the owner or owners of the land such compensation for the exercises of the rights powers and liberties conferred by this Licence as the Governor may from time to time determine.

6. All excavations or borings which may have ben made on the said lands during the subsistence of this Licence shall, unless the Director of Geological Survey otherwise determines be filled up, and so far as possible the surface of the land shall be restored to its condition prior to such excavations or borings, and the Licensee shall indemnify the Governor against all claims and demands which may be made by any other person for damage shown to result from the exercise of the powers hereby conferred.

7. The Licensee shall permit the Director of Geological Survey or a Geologist or Geophysicist of the Geological Survey Department nominated by the Director to accompany the officers, agents or servants of the Licensee exploring and searching for petroleum under this Licence and to have access to the field records of such searches and exploration.

8. The License shall furnish to the Director of Geological Survey a quarterly report (which he hereby undertakes to have prepared) indicating the progress of his operations under this Licence in and upon the said lands and containing a map, on a scale to be agreed between the Director of Geological Survey and the Licensee, which shall show the true topographic position of any land geologically or geophysically surveyed examined or mapped. The quarterly report and map shall include full particulars of any discovery or indication of petroleum or petroleum bearing strata, and of any mineral of commercial value other than petroleum. Any officer authorised by the Director of Geological Survey may at all reasonable times inspect and make abstracts or copies of any logs records plans or maps prepared by the Licenses in the course of his operations under this Licence. All such information so supplied by the Licensee shall (except with the consent in writing of the Licensee, which shall not be unreasonably withheld) be treated by the Director of Geological Survey as confidential, and shall not be published until the expiration or determination of this Licence except to the Government of the United Kingdom and its advisers but the

Director of Geological Survey shall nevertheless be entitled at any time to make use of any information received from the Licensee fro the purpose of preparing and publishing aggregated returns and general reports on the extent of oil prospecting or oil mining operations in the said Colony and Protectorate and for the purpose of any arbitration or litigation between the Governor and the Licensee.

9. The Licensee may remove any specimens or samples of petroleum found by him in or upon the said lands in the course of his operations under this Licence, but shall furnish the Director of Geological Survey as soon as possible with full information of all such specimens and samples so removed and shall upon demand made within 30 days of the receipt by the Director of Geological Survey of such information provide the Director of Geological Survey with such representative specimens and samples as may be required, not exceeding one half of any individual specimen or sample or sample so removed by the Licensee and the Director of Geological Survey shall be entitled to retain any specimen or sample so delivered.

10. The Licensee shall not enter upon any parcel of land for the purpose of this Licence until an officer of the Government of Nigeria has been able to explain to the natives residing in the vicinity of the said land, if any, the reasons for such entry, in order to allay any anxiety which the said natives may have as to disturbance of their rights.

11. The Licensee shall not form or endeavour to form or procure or permit to be formed any Company Syndicate or

Association incorporated or unincorporated not make any public appeal by means of a prospectus, or otherwise for money for the purpose of exploiting the lands which are the subject of this Licence or any portion thereof without the permission in writing of the Governor, and then only upon such terms and conditions as the Governor may prescribe and the decision of the Governor in these respects shall be final and binding on the parties hereto.

12. The Licensee shall not grant or assign any interest under this Licence nor part with the possession of any of the rights hereby granted to any person or persons whomsoever without the previous consent in writing of the Governor.

13. The Licensee shall not assign or attempt to assign the rights granted by this Licence to any person other than a British subject or a Company incorporated in Nigeria or in some other part of His Majesty's dominions, save in respect of the areas of the said lands being within the Trust Territory.

14. If the Licensee shall cease to be a British subject or a Company incorporated in the Colony and Protectorate or in some other part of his Majesty's dominions he shall forthwith inform the Governor and apply to him for his consent to an assignment of the rights granted by this Licence in accordance with clause 12 (consent to assignment) hereof and in the event of the Licensee failing to obtain such consent within such time as the Governor may in his discretion appoint, the Governor may revoke this Licence. The revocation of this Licence in pursuance of the foregoing

provisions of this clause shall be subject and without prejudice to any obligation or liability imposed by or incurred under the terms and conditions hereof, save that the provisions of this clause shall not apply in respect of the right and licence granted hereunder in respect of that area of the said lands being within the Trust Territory.

15. If the Licensee being a Company shall be or become controlled directly or indirectly by an alien or a Company incorporated outside His Majesty's dominions or if the Licensee shall with the consent in writing of the Governor assign the rights granted by this Licence in respect of the said lands or any part thereof to a Company controlled directly or indirectly by an alien or by a Company incorporated outside His Majesty's dominions then and in any such case

(a) The Chairman and the Managing Director, if any, and the majority of the other Directors and the Chief Local Representative shall be British subjects.

(b) At all times during the term hereby granted or any renewal thereof a majority of the persons employed by the Licensee in or about the said lands in connection with the exercise of the rights granted by this Licence shall be British subjects,

save that the provisions of this clause shall not apply in respect of the rights and licence granted hereunder in respect of the Trust Territory.

16. This Licence shall be determined if the Licensee shall be or become controlled directly or indirectly by a national

of or by a Company incorporated in any country the laws and customs of which do not permit British subjects or companies incorporated in His Majesty's dominions to acquire hold and operate petroleum concessions on conditions which in the opinion of His Majesty's Principal Secretary of State for the Colonies are reasonably comparable with the conditions upon which such rights are granted to nationals of that country with the addition of conditions corresponding to those imposed by this clause and the immediately preceding clause hereof, save that the provisions of this clause shall not apply in respect of the right and licence granted hereunder in respect of the Trust Territory.

17. In the event of the inclusion by inadvertence in the said Schedule of lands or areas over which it may subsequently be proved that the Government are not entitled to the oil rights or of lands or areas in respect of which the oil rights have already been granted to other individuals or companies, the Licensee shall immediately release to the Governor any such lands or areas when required to do so by the Director of Geological Survey.

18. Notwithstanding the rights conferred on the Licensee under this Licence, the Governor shall have power at any time to require the exclusion from the lands included in the said Schedule of any area or areas which may from time to time be required for villages, new villages, village extensions, water reserves or any other public purpose, provided that during the subsistence of this Licence, the area or areas so excluded shall not exceed in all 50 square miles and provided further that if the Licensee shall

satisfy the Governor that the exclusion of such area or areas will interfere with his proposed operations he shall have the right to indicate other areas from which the said 50 square miles can be selected with the least interference to his operations.

19. If the Licensee shall at any time refuse or neglect to observe or perform any of the terms and conditions of this Licence the Governor may by notice in writing signed by him and served upon the Licensee summarily declare that the Licence granted shall thenceforth determine and the Licence and all rights and liberties conferred hereby or enjoyed hereby or hereunder shall forthwith determine without prejudice to the rights and remedies of the Governor in respect of any prior breach or non-performance of any or all of the terms and conditions hereof on the part of the Licensee. Provided always that the aforesaid power shall not be exercisable unless and until notice has been given to the Licensee specifying the particular breach complained of and if the breach is capable of remedy, requiring the Licensee to remedy the breach and, in any case, requiring the Licensee to make compensation in money for the breach, and if the Licensee fails, within a reasonable time, thereafter, to remedy the breach if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the Governor for the breach.

20. The Governor may at his discretion on an application made in that behalf by the Licensee on three months' notice in writing grant a renewal of this Licence in respect of the whole of the said lands or any part thereof for a further

term of twelve months subject to the payment by the Licensee of an appointed part of the sum mentioned in clause 1(fee) hereof based upon the proportion which the area retained bears to the area originally licensed hereby.

21. The Governor shall not during the period of the Licence hereby granted to the Licensee grant to any other person or Company licence to explore or search for petroleum in the said lands save in respect of that area of the said lands being within the Trust Territory.

22. On or before the expiration of this Licence or any renewal thereof the Licensee observing and performing the terms and conditions herein contained shall have a right (subject to the provisions prescribed in any written law or regulation then in force for granting Oil Prospecting Licences) to an Oil Prospecting Licence or Licences in respect of so much of the said lands as the Licensee may select: Provided that the grant of any such Oil Prospecting Licence shall not entitle the Licensee to the grant of a lease for mineral oils save in accordance with such terms and conditions whether in respect of the composition of the body or company to which such lease may be granted or otherwise whatsoever, as the Governor may determine at the time of the grant of such prospecting licence.

23. (1) Failure on the part of the Licensee to fulfil any of the terms and conditions of this Licence shall not give the Governor any claim against the Licensee or be deemed a breach of this Licence in so far as such failure arises from force majoure and if through force majoure the fulfilment by the Licensee of any of the terms and conditions of this

Licence be delayed the period of such delay shall be added to the periods fixed by this Licence.

(2) In this clause the expression "force majeure" includes the act of God, war, insurrection, riot, civil commotion, tide, storm, tidal wave, flood, lightning, explosion, fire, earthquake and any other happening which the Licensee could not reasonably prevent or control.

24. If at any time during the continuance of this Licence or after the determination thereof any question or dispute shall arises regarding this Licence or any matter or thing connected therewith or the powers duties or liabilities of the Licensee hereunder then and in all such cases the matter in difference shall be referred to arbitration in accordance with the provisions of the Arbitration Ordinance (Chapter 9) or any Ordinance or law amending or replacing the same for the time being in force.

25. The marginal notes are for convenience only and do not form part of this Licence.

26. For the purpose of this Licence :-

(1) "petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural conditions in strata but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

(2) "His Majesty's dominions" shall be deemed to include British Protectorates and protected states and territories under United Kingdom Trusteeship.

(3) "British subject" shall be deemed to include a person under His Majesty's protection.

(4) "Trust Territory" means the Cameroons under United Kingdom Trusteeship.

27. The provisions of Section 7 of the Minerals Ordinance, 1945, shall apply mutatis mutandis to this Licence.

IN WITNESS WHEREOF the Governor has set his hand and caused the Public Seal of Nigeria to be affixed and Robert Hendry Bugler as attorney of the said Licensee by virtue of Powers of Attorney granted by the D'Arcy Exploration Company Limited and the "Shall" Overseas Exploration Company Limited dated the 2nd day of November, 1948, and recorded at pages 47 and 40 respectively in volume 785 of the Lands Registry in the Office at Lagos has hereunder set his hand and Seal the day and year first above written.

APPENDIX E

PARTICIPATION AGREEMENT BETWEEN NIGERIAN NATIONAL PETROLEUM CORPORATION AND ELF NIGERIA LIMITED 1985

THIS AGREEMENT is made the .... day of .... 1985 BETWEEN the NIGERIAN NATIONAL PETROLEUM CORPORATION, a body corporate established under the laws of the Federal Republic of Nigeria whose office is at Falomo Office Complex, Ikoyi, Lagos, Nigeria (hereinafter called "NNPC" which expression shall, where the context so admits, include its predecessor, successors and assigns), of the one part, and ELF NIGERIA LIMITED, a Company incorporated under the laws of Nigeria whose Head Office is at 35, Kofo Abayomi Street, Victoria Island, Lagos, Nigeria (hereinafter called the "COMPANY", which expression shall, where the context so admits, include its predecessors, and assigns).

WHEREAS by the Agreement made between the FEDERAL MILITARY GOVERNMENT OF NIGERIA (hereinafter called "the Government", which expression shall include its successors) and SAFRAP (NIGERIA) LIMITED (now called ELF NIGERIA LIMITED) dated 31st May, 1972, the Government acquired with effect from 12th April 1971 an undivided thirty-five per cent (35%) interest in the Oil Mining Leases, the Assets and the Working Capital, all as hereinafter defined;

WHEREAS with effect from the 1st day of April, 1974, the Government owned an undivided fifty-five per cent (55%) interest in the Oil Mining Leases, the Assets and the Working Capital;

WHEREAS the Government, by virtue of the Nigerian National Petroleum Corporation Act, 1977, has transferred to NNPC without the requirement for any further assurance, the rights, interests and obligations arising from all contracts and instruments entered into by the Government for any purpose for which the former Ministry of Petroleum Resources had responsibility;

WHEREAS NNPC with effect from 1st July, 1979, acquired an additional undivided five per cent (5%) interest in the Oil Mining Leases, the Assets and the Working Capital; and

WHEREAS the parties hereto have agreed to consolidate all previous agreements and arrangements between the parties hereto relating to or resulting from the acquisition of interest by the Government or NNPC in and to the Oil Mining Leases, the Assets and the Working Capital and the rights, interests and obligations of the parties relating thereto.

NOW THE PARTIES HERETO AGREE as follows:

ARTICLE ONE

Acquisition of Participating Interest

1.01 It is hereby acknowledged and confirmed as follows:

a) The Government acquired, with effect from 12th April, 1971, an undivided thirty-five per cent (35%) interest (any such respective undivided interest from time to time held by the Government, NNPC, or the COMPANY is hereinafter referred to as a "Participating Interest") in

  i) the Oil Mining Leases, particulars of which are set forth in Annex 1 (hereinafter called "Oil Mining

Leases");

ii) the fixed and movable assets of the COMPANY in Nigeria, including without limitation, the COMPANY's exploration, development, production transportation, storage, delivery and export operations and associated assets such as offices, housing and welfare facilities (hereinafter collectively called the "Assets"); and

iii) The working capital applicable to the operations of the Oil Mining Leases including without limitation, material stocks including those in transit, debts of staff debtors, property rents, concession rents, insurance and other repayments (hereinafter referred to as the "Working Capital");

b) The Government acquired, with effect from 1st April, 1974 an additional undivided twenty per cent (20%) interest in the Oil Mining Leases, the Assets and the Working Capital;

c) NNPC acquired, with effect from 1st July, 1979 an additional undivided five per cent (5%) interest in the Oil Mining Leases, the Assets and the Working Capital;

d) The Government has paid or caused to be paid to the COMPANY a total sum of Six Hundred and Seventy-One Thousand Five Hundred and Twenty-Nine Point Five One (671,529.51) Nigerian Pounds between 1972 and 1974 being the full and final consideration for the acquisition of an undivided fifty-five per cent (55%) interest in the Oil Mining Leases, the Assets and the Working Capital; and

e) With effect from 12th April 1971, the Government or NNPC, as the transferee of the Government, and the COMPANY have been responsible for all the liabilities, obligations, costs and expenses relating to the Oil Mining Leases and the Assets in the proportion of their respective Participating Interests.

ARTICLE TWO

Transfer and Assignment

2.01 In consideration of the amounts payable to the COMPANY by NNPC pursuant to Article Three hereof, the COMPANY hereby transfers and assigns to NNPC and NNPC hereby acquires an additional undivided five per cent (5%) Participating Interest in the Oil Mining Leases, the Assets and the Working Capital effective from the 1st day of July, 1979 (the "Effective date"):

2.02 In consequence of the transfer and assignment set forth in Article 2.01 hereof and the provisions of Article One hereof the parties hereto covenant and agree that, as from the Effective Date, the Oil Mining Leases, Assets and Working Capital formerly owned by NNPC and the COMPANY as participants in the operations in the respective Participating Interests of 55% and 45% shall be held, owned and contributed to in the following proportions:

NNPC	60%
COMPANY	40%

As from the Effective Date, NNPC and the COMPANY shall each be responsible for all liabilities and obligations relating to the Oil Mining Leases, Assets and Working Capital in the proportion of their respective Participating Interests, that is to say NNPC 60% and the COMPANY 40%.

ARTICLE THREE

Consideration

3.01 The consideration to be paid by NNPC for the additional five per cent (5%) Participating Interests in the Oil Mining Leases, Assets and Working Capital acquired as set forth in Article 2.01 hereof shall be a total sum of One Million One Hundred and Twenty-Six Thousand and Thirty-Two Naira (N 1,126,032.00), the evaluation of which is set forth in Annex II attached hereto and forming part hereof, and which sum is made up of the sums set forth in Articles 3.02 and 3.03.

3.02 The consideration to be paid by NNPC for the Oil Mining Leases and the Assets acquired pursuant to Article 2.01 hereof shall be One Million, Five Hundred and Twenty-Nine Thousand, Seven Hundred and Twenty-Nine Naira (N 1,529,729.00), the evaluation of which sum is set forth in Annex III attached hereto and forming a part hereof, and is based on Fiscal Book Value as on the Effective Date. Fiscal Book Value for this purpose is defined as: the sum of all qualified capital expenditures (including construction in progress) as defined by the Nigerian Petroleum Profits Tax Act, and all exploration costs, intangible drilling costs and similar and related expenditures less the cumulative capital allowances and allowable deductions based on such costs and which were utilised by the COMPANY to reduce the COMPANY's Nigerian tax liability up to the Effective Date.

3.03 NNPC also assumed as of the Effective Date a liability in respect of Working Capital in the sum of four Hundred and Three Thousand, Six Hundred and Ninety Seven Naira (N 403,697.00), the evaluation of which sum is set forth in Annex IV attached hereto and forming part hereof.

3.04 NNPC shall in addition pay to the COMPANY the sum of Eight Hundred and Twenty Three Thousand, Four Hundred and Sixty Three Naira (N 823,465.00) which sum comprises compound interest on the consideration payable to the COMPANY pursuant to Clause 3.01 hereof at the rate of ten per cent (10%) per annum from 1st day of July 1979 to 31st March 1985 as set forth in Appendix A to Annex II attached hereto and forming part hereof.

ARTICLE FOUR

Payment

4.01 NNPC and the COMPANY agree that payments under Article 3 hereof shall be made either in cash within 30 (thirty) days of the signature of this Agreement or by deliveries of mutually agreed grades of crude oil on dates to be agreed mutually between NNPC and the COMPANY free on board a vessel or vessels to be designated by the COMPANY. The total quantity of cruel oil to be so delivered shall be calculated on the basis of the Official Selling Prices for those grades ruling on the dates of loading.

4.02 The amount to be paid in accordance with Article Three hereof shall be certified by an independent auditor selected by NNPC and acceptable to the COMPANY on or before the one hundred and eightieth day following the signing of this Agreement. If discrepancies are found as a result of the audit, then the amount of consideration shall be adjusted as appropriate and the differential payment or repayment shall be made within ninety days following the date of completion of such audit and such differential payment shall not bear interest.

4.03 Payment by NNPC of such certified amount or such deemed certified amount and receipt by the COMPANY thereof shall be binding and represent full, fair and final settlement of all claims between NNPC and the COMPANY with respect to the transfer and assignment of the said five per cent (5%).

ARTICLE FIVE

Operations Provisions

5.01 The Parties hereto acknowledged that from the 1st day of April, 1973 the COMPANY, as "Operator", has conducted petroleum operations under the Oil Mining Leases for itself and on behalf of the Government or NNPC as transferee of the Government interest therein. As Operator, the COMPANY shall not receive any remuneration.

5.02 The Parties hereto acknowledged and confirm that as of and with effect from the Effective Date they have each contributed and shall continue to contribute their respective Participating Interest shares of all funds expended in the conduct of the joint operations by the COMPANY as Operator.

5.03 As soon as practicable after the execution of this Agreement NNPC and the COMPANY shall enter into an Operating Agreement (the "Operating Agreement") with an Accounting Procedure both of which shall be in the form commonly in use in the petroleum industry for petroleum joint venture agreements, subject nevertheless to changes as may be agreed upon by the Parties hereto, ad which shall provide for the joint control, supervision and direction of operations by mutual agreement of the Parties. The Operating Agreements shall further provide, without limitation, for the following:

a) the payment by the Parties of their respective Participating Interest shares of all funds required by the Operator to conduct operations;

b) the right of the Parties to their respective Participating Interest shares of each grade of all Available Production from the ares of the said Oil Mining Leases;

c) the establishment of an operating committee consisting representatives of the Parties hereto for control of the operations;

d) the production, and off-lifting by the Parties of their respective Participating Interest shares in accordance with the Heads of Agreement made between the parties hereto dated the .... day of 1985;

e) the payment by each Party of royalty in respect of the crude oil won and saved for its account and all taxes for which it is liable;

f) change of Operator; and

g) the furnishing information (including technical and financial) by the Operator to the other Party as may be required from time to time by the other Party.

ARTICLE SIX

Existing Agreements

This Agreement supercedes all previous agreements and arrangements between the Parties hereto relating to the acquisition of an undivided percentage interest by the Government or NNPC in and to the Oil Mining Leases, the Assets and the Working Capital of the COMPANY and the rights, interests and obligations of the Parties relating thereto.

ARTICLE SEVEN

Arbitration

In the event of any dispute or difference arising between the Parties concerning the interpretation or performance of this Agreement or anything there contained or in connection therewith or the rights and liabilities of either of the Parties and if the Parties should fail to settle such difference or dispute by agreement, then either Party may serve on the other a demand for arbitration.

Within thirty (30) days of such demand being served, each Party shall appoint an arbitrator and the two arbitrators thus appointed shall within a further fifteen (15) days appoint a third arbitrator who shall be of a nationality different from that of either of the Parties or the arbitrators (the nationality of a Company being the nationality of the majority of its shareholders or controllers) and id either Party fails to appoint the arbitrator to be appointed by it such arbitrator shall be appointed by the President or Vice President of the International Court of Justice on the application of either Party (notice of the intention to apply having been duly given in writing by the applicant Party to the other Party) and when appointed, the third arbitrator shall convene meetings and act as Chairman thereof. If an arbitrator fails or is unable to act, his successor will be appointed in the same manner as the arbitrator he succeeds. The arbitration rules and procedures and the award of the arbitrators, shall be determined by a majority of the arbitrators or, in the absence of agreement by the two arbitrators by the Chairman alone. The arbitration award shall be binding upon the Parties and expenses of the arbitration shall be borne by the Parties in such proportion as provided for in the award. Save as aforesaid the Nigerian Arbitration Act Cap.13 of the 1958 Revised Edition of the Laws of the Federation of Nigeria shall govern the conduct of the arbitration. The venue of the arbitration shall be Lagos, Nigeria.

ARTICLE EIGHT

Governing Law

All rights and obligations under this Participating Agreement shall be construed, interpreted and governed in accordance with and by the laws of Nigeria.

IN WITNESS whereof of the Parties hereto have caused their common Seals to be hereunto affixed the day and year first above mentioned.

SIGNED, SEALED AND DELIVERED
for and on behalf of
NIGERIAN NATIONAL PETROLEUM CORPORATION
By : ....
In the presence of : Name : ....
Signature : ....
Address : ....
....

SIGNED, SEALED AND DELIVERED
for and on behalf of
ELF NIGERIA LIMITED
By : ....
In the presence of : Name : ....
Signature : ....
Address : ....
....

APPENDIX G

PRODUCTION SHARING CONTRACT BETWEEN THE NIGERIAN NATIONAL PETROLEUM CORPORATION AND ASHLAND OIL (NIGERIA) COMPANY

THIS AGREEMENT is made this .... day of ..... 1986, BETWEEN the NIGERIAN NATIONAL PETROLEUM CORPORATION, a Corporation established under the Laws of the Federal Republic of Nigeria whose head office is at Ten Storey building, Falomo Office Complex, Ikoyi, Lagos (hereinafter referred to as "NNPC" which expression shall where the context so admits include its predecessors, successors-in-title, and assigns) of the one part and ASHLAND OIL (NIGERIA) COMPANY, an unlimited company incorporated in Nigeria under the Companies Act of 1968 whose registered office is at No. 10, Bishop Aboyade Cole Street Victoria Island, Lagos (hereinafter referred to as "Ashland", which expression shall where the context so admits include its predecessors, successors-in-title, and assigns) of the other part.

WHEREAS, NNPC and Ashland entered into a Production Sharing Contract dated 12th June, 1973, as amended by the agreement between the Parties dated the 1st day of April 1977, hereinafter collectively called the "Contract" and

WHEREAS, by a Letter of Understanding dated the 1st day of September, 1985, NNPC and Ashland agreed to amend the Contract to incorporate the terms and conditions contained in the said Letter, into this Agreement as hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and covenants herein contained, it is hardly agreed as follows:

CLAUSE 1

DEFINITIONS, EXCLUDED CLAUSES AND CONTRACT AREA

(a) DEFINITIONS

(i) "Effective Date" means 1st September, 1985.

(ii) "Accounting Procedure" beginning with the Effective Date of this Agreement means Annex "A" attached hereto and made a part hereof.

(iii) "Contract Area" means that area described in subclauses (c) of this Clause 1.

(iv) "Cost Oil", "Tax Oil" and "Participating Interest Share" as defined under the Contract shall have no further application to the Contract and this Agreement except with respect to transactions pertaining to periods prior to the Effective Date of this Agreement.

(v) "Operating Costs" beginning with the Effective Date of this Agreement means expenditures made and obligations incurred in carrying out Petroleum Operations as determined in accordance with the Accounting Procedure.

(vi) "Net Realized Price "per barrel beginning with the Effective Date means the amount determined by using a net-back valuation method of determining Net Realised Price which method shall be in accordance with procedures to be mutually agreed between the Parties as soon as feasible following the execution of this Agreement.

(vii) All terms not defined in this Agreement shall have the same meaning as those defined in the Contract.

(b) EXCLUDED CLAUSES

Paragraph (i), subclauses (i) of Clause 5 and Clauses 6 and 7, of the Contract in their entirety, shall be of no further force or effect regarding Petroleum Operations conducted by Ashland under the Contract beginning with the Effective Date. It is the intent of the Parties hereto that all matters formerly covered by the said Clauses shall now be governed exclusively by the provisions of this Agreement as from the Effective Date. Except as specifically amended by this Agreement, the Contract, as amended effective 1st April, 1977 shall remain in full force and effect.

(c) CONTRACT AREA

Pursuant to Clause 3(i) of the Contract, fifty percent (50%) of the Contract Area has been excluded. Since the date of the said exclusion and for all purposes under this Agreement, the Contract Area shall consist of such area as is reflected on the maps attached to this Agreement as Annex "B".

CLAUSE 2

NEW WORK PROGRAMMES

(a) Ashland shall conduct the following programme in the Contract Area:

(i) Three-D shallow/deep water seismic coverage over a minimum area of 150 sq. kms in OPL 98, including the Adanga North, Bogi, Mimbo, Ukpam and Ebughu prospects;

(ii) Commence a two well exploration drilling programme in

OPL 98, by 15th October, 1986;

(iii) Drill two wells in each of the Mimbo and Bogi OPL 98 Fields beginning in 1987;

(iv) Commence drilling one onshore (OPL 118) exploration well

by 15th July, 1986 and

(v) The programmes set forth in this subclause (a) may be modified from time to time by mutual agreement. Such modifications could be dictated by economic, capital, operational or other conditions.

(b) Should the exploration wells provided for under subclause (a) of this Clause 2 be completed as a part of the Contract Area and not under a sole risk programme as hereinafter provided result in the discovery of Crude Oil, the Parties shall agree on whether to proceed with an appraisal programme.

(c) Should the appraisal programme be completed as a part of the Contract Area and not under a sole as hereinafter provided, the Parties shall agree on whether to commence with a development programme.

(d) Should one of the Parties decide not to commence with an exploration programme or thereafter not to proceed with an appraisal programme or a development programme with respect to a field, the other Party shall have the option to proceed with such a sole risk programme under provisions to be mutually agreed between the Parties as soon as feasible following the execution of this Agreement.

CLAUSE 3

NATURAL GAS

(a) All Natural Gas discovered in the Contract Area be the sole property of NNPC and shall not be covered by this Agreement. However, NNPC shall give Ashland first consideration on sales of such Natural Gas.

(b) In the event that Ashland discovers a commercially viable gas field, and NNPC requires Ashland to investigate and submit proposals for the commercial development of the gas field for NNPC's consideration, any costs incurred after drilling and temporarily abandoning any discovery well for later re-entry shall be for the sole account of NNPC. Unless otherwise agreed, NNPC shall advance all funds necessary to conduct all operations involving the said gas field commencing with re-entry operations.

(c) With prior approval from NNPC, Ashland shall use, at no cost to it, such quantities of associated natural gas produced with any Crude Oil in the Contract Area as may be required for use as fuel for production operations, gas recycling, secondary recovery by gas injection, gas lift, or any other economical secondary recovery schemes, stimulation of wells or artificial lift necessary in the commercial fields discovered and developed by Ashland which use shall be in accordance with industry standards and Ashland conduct of operations as a prudent operator.

(d) It is understood and agreed that the primary objective of this Agreement is the exploration for and exploitation of Crude Oil within the Contract Area.

CLAUSE 4

RECOVERY OF COSTS AND PROFITS

(a) Ashland shall pay to NNPC all Royalties and Petroleum Profits Tax payable with respect to the Available Crude Oil in accordance with Clause 6 of this Agreement. Ashland shall also pay for all other expenditures and obligations incurred in carrying out the Petroleum Operations. Ashland shall recover such costs and expenditures as provided under this Clause 4.

(b) Proceeds, (defined as the amount determined by multiplying the Net Realised Price by the number of barrels of Available Crude Oil marketed) shall be allocated in the following order of priority:

(i) To Ashland:

(1) Royalties

(2) Petroleum Profits Tax

(3) Operating Costs

(4) Carryover, as defined in subclause (d) of this Clause 4.

(ii) To NNPC and Ashland, their respective Profit Share as defined in subclause (e) of this Clause 4.

(c) Proceeds shall be allocated on monthly basis, subject to a yearly adjustment, all in the manner as provided for in the Accounting Procedure.

(d) Carryover occurs when the combination of Royalties, Petroleum Profits Tax, Operating Costs, as well as any Carryover brought forward from the previous month, exceed the Proceeds for that month.

(e) Profit Share consists of the amount of the Proceeds remaining after deducting Royalties, Petroleum Profits Tax, Operating Costs, and Carryover. Such Profit Share, if any, shall be allocated between the Parties depending on the average daily production rate for the month as follows:

Average Barrels of Crude Oil Per Day For The Month		Profit Share Percentage Ashland	NNPC
First	30,000	45	55
Next	20,000	41	59
Next	50,000	39	61
Over	100,000	33	67

CLAUSE 5

ALLOCATION OF AVAILABLE CRUDE OIL

(a) Each Party shall be entitled to market a portion of the Available Crude Oil. Such portions shall be referred to as "Lifting Allocations". Ashland Lifting Allocation shall be equal to the equivalent barrels of Available Crude Oil required for the recovery of Royalties, Petroleum Profits Tax, Operating Costs, Carryover, and Ashland share of the Profit Share. NNPC's Lifting Allocation shall be equal to the equivalent barrels of NNPC's share of the Profit Share.

(b) At least 60 days prior to the first day of each calendar quarter, Ashland shall calculate for such calendar quarter the estimated Lifting Allocation which each Party is entitled to market sharing the said quarter in accordance with Schedules 4 and 4A of the Accounting Procedure. NNPC's Lifting Allocation shall be marketed by Ashland unless NNPC upon written notice 30 days prior to the first day of any calendar quarter revokes Ashland authority to market on its behalf all or a part of NNPC's Lifting Allocation during such calendar quarter.

(c) NNPC may propose to make liftings from Ashland Lifting Allocation by giving notice to Ashland at least 90 days prior to NNPC's proposed lifting, provided this shall not conflict with Ashland obligations incurred under agreements, contracts and arrangements made by Ashland prior to NNPC's proposal, and further provided that Proceeds due Ashland for all such previous liftings shall have been received by Ashland pursuant to subclauses (c) of Clause 6. Such NNPC proposals shall indicate the price per barrel ("NNPC's proposed price") including all adjustments at which NNPC shall value such liftings, and the volume it proposes to lift. With ten (10) days after the receipt of such notice from NNPC, Ashland shall notify NNPC regarding Ashland intention to meet NNPC's proposed price. If such notice is not given within the said ten (10) day period, NNPC shall market the proposed lifting and account to Ashland at NNPC's proposed price pursuant to subclauses (c) of Clause 6 and the Accounting Procedure. Should Ashland give notice to meet NNPC's proposed price, then Ashland shall be free to make such lifting and account at such price in accordance with Clause 4 and the Accounting Procedure. In the event that such lifting are made by Ashland pursuant to this subclauses (c), the Net Realist Price for that lifting for the purpose of determining the Proceeds under subclauses (b) of Clause 4 and the Accounting Procedure shall be equal to NNPC's proposed price.

(d) Ashland shall be entitled to take and receive and export the Crude Oil which it is entitled to market hereunder subject to the general conditions of sale and purchase of Nigerian crude oil relating to prohibited destinations.

(e) Each of the Parties shall have the right to take and dispose of its Lifting Allocation.

(f) Title to the Available Crude Oil allocated to the Parties hereunder shall pass at the wellhead.

CLAUSE 6

PAYMENTS

(a) Ashland shall pay monthly, in U.S. Dollars, into a bank account designated by NNPC, the following:

(i) Royalties within 60 days of the last day of the month in which production takes place or within such other period as is permitted under applicable Nigerian laws;

(ii) Petroleum Profits Tax liability instalment for the month computed in accordance with sublease (d) of this Clause 6;

(iii) NNPC's Profit Share, for the month (based on total Crude Oil lifted by the Parties) within 60 days of the last day of the month in which the relevant Crude Oil is lifted.

(b) In the event that NNPC markets its Lifting Allocation pursuant to Clause 5 hereof, the Proceeds pertaining to the quantity of Crude Oil so marketed shall be applied against Ashland payment obligations under subclauses (a) of this Clause 6 as provided in the Accounting Procedure.

(c) Should NNPC market Ashland Lifting Allocation pursuant to subclauses (c) of Clause 5 then the value of such lifting thereof as determined thereunder shall be applied to the recovery by Ashland of its costs and profits under Clause 4 and as reflected in Schedule 2 of the Accounting Procedure filed with NNPC for the month following such lifting by payment to Ashland in U.S. Dollars into Ashland designated bank account within sixty (60) days of the last day of the month in which the lifting is made, the value of the lifting determined under subclauses (c) of Clause 5. In the event that any amount due from NNPC hereunder is unpaid amount shall be applied against payments due NNPC under subclauses (a) of this Clause 6 as provided in the Accounting Procedure.

(d) The amount payable by Ashland to NNPC for the purpose of payment of Petroleum Profits Tax ("PPT") by NNPC shall be computed in accordance with the Petroleum Profits Tax Act 1959 and its amendments provided, however, that the applicable PPT rate for each field that commence production after the Effective Date of this Agreement shall be 65.75% for the first five years of production from each such field commencing from the first day of the month of first sale therefrom. NNPC shall make all required PPT payments to the Federal Inland Revenue Department in respect of Available Crude Oil from the Contract Area and the payment by Ashland to NNPC in accordance with this subclauses (d) shall fully discharge Ashland PPT liability. Any payments of PPT made by Ashland that exceed or is less than the amount required under the provisions of this subclauses (d) shall be offset against or added to, as the case may be, Ashland payment obligations under subclauses (a) of this Clause 6.

CLAUSE 7

NATIONAL INTEREST PRODUCT

As soon as feasible after execution of this Agreement, (but before 31st December, 1986), Ashland shall at its sole cost provide and install in the Petroleum Training Institute, Warri, Pertal State, a petroleum laboratory of a kind and cost acceptable to the Parties. The provision and installation cost of the laboratory shall not be chargeable as Operating Cost.

CLAUSE 8

OTHER PROVISIONS

(a) Ashland, in keeping with the standards observed in the conduct of Petroleum Operations by companies engaged in international petroleum exploration and production, shall take out and maintain with the National Insurance Corporation of Nigeria (NICON) for the duration of this Agreement insurance coverages adequate to protect the interests of Ashland and NNPC with regard to Petroleum Operations undertaken pursuant to this Agreement. All such coverage shall name NNPC as a co-insured with a waiver of subrogation in favour of NNPC. Ashland shall deliver to NNPC a copy of such insurance policies.

(b) NNPC shall use its best endeavors to ensure that any incentives of general application granted by government to the oil industry is extended to Ashland.

(c) In the performance of the Contract and this Agreement, Ashland shall be liable as provided by Nigerian law for its own acts of gross negligence or wanton or wilful misconduct including those of its employees and agents engaged in the performance of the Contract and this Agreement and shall be liable for payment of damages to the extent not covered by its insurance.

(d) The implementation of projects hereunder shall be in accordance with procedures to be mutually agreed between the Parties as soon as feasible following the execution of the Agreement.

(e) Scheduling and nominating of lifting hereunder shall be in accordance with procedures to be mutually agreed between the Parties as soon as feasible following the execution of this Agreement.

AS WITNESS the hands of the duly authorised representatives of the Parties the day and year first above written.

Signed and delivered for and on behalf of
NIGERIAN NATIONAL PETROLEUM CORPORATION
By: ....
Designation: ....
IN the presence of:-
Name: ....
Signature: ....
Designation: ....
Address: ....
....

Signed and delivered for and on behalf of
ASHLAND OIL (NIGERIA) COMPANY
By: ....
Designation: ....
IN the presence of:-
Name: ....
Signature: ....
Designation: ....
Address: ....

BIBLIOGRAPHY

BOOKS

Ake, Claude., *Political Economy of Nigeria,* Longman, Lagos, 1985.

Akeredolu-Ale, E.O., *The Underdevelopment of Indigenous Enterpreneuship in Nigeria,* Ibadan University Press, Ibadan, 1985.

Akinbobola, A. *Should Nigeria be in OPEC?* NIIA Monograph Series, Lagos, 1979.

Amin, Samir., *Imperialism and Unequal Development,* Monthly Review, New York 1974.

Asiodu, P.C., *Nigeria and the Oil Question,* Ibadan University Press, Ibadan, 1979.

Atiyah, P.S., *The Rise and Fall of Freedom of Contract,* Clarendon Press, Oxford, 1979.

Awolowo, O., *Thoughts on Nigerian Constitution,* Oxford, 1966.

Barbara, W. et al (eds), *The Widening Gap. Development in the 1970s,* Columbia University Press, New York, 1971.

Barrows, G.H., *World Petroleum Arrangements*, New York, 1980.

------------- *Worldwide Concession Contracts and Petroleum Legislation,* Pennwell Publishing, Oklahoma, 1983.

Beale, H. et al., *Contracts, Cases and Materials,* Butterworths, London, 1990.

Bernstein, H.(ed), *Underdevelopment and Development: Third World Today,* Harmandsworth, England, 1973.

Biersteker, T., *Distortions or Development? Contending Perspectives on the Multinational Corporation,* MIT Press, Cambridge, 1978.

Blankenburg, E.(ed), *Innovations in the Legal Services*, Konigstein, Germany, 1980.

Blinn, K.W.,et al., *International Petroleum Exploration and Exploitation Agreements*, Euromoney Publications, 1986.

Bondzi-Simpson, P.E., *Legal Relationships between Transnational Corporations and Host States*, Quorum Books, London, 1990.

Brownlie, I., *Principles of Public International Law*, 1979.

Burkharim, N., *Imperialism and World Economy*, London, 1917.

Cathan, H., *The Evolution of Oil Concessions in the Middle East and North Africa*, Oceana Publications, New York, 1967.

Chen, E.K.Y., *Multinational Corporations, Technology and Employment*, Macmillan Press, London, 1983.

Commonwealth Universities Yearbook, Volume 3, 1991.

Danielsen, A.L., *The Evolution of OPEC*, Harcourt, Brace 1982.

David, L.(ed), *Development Theory: Four Critical Studies*, London, Frank Cass, 1979.

Elias, T.O.(ed), *Oil in Nigeria: Law and Social Change in Nigeria*, 1979,

---------- *Nigeria: The Development of its Laws and Constitutions*, Stevens & Sons, London, 1967.

Etikerentse, G., *Nigerian Petroleum Law*, Macmillan, London, 1985.

Fabrikant, R., *Oil Discovery and Technical Change in Southeast Asia - Legal Aspects of PSCs in the Indonesian Petroleum Industry Institute of Southeast Asia Studies*, Singapore, 1973.

Faundez, J.and S. Picciotto.(eds), *The Nationalisation of Multinationals in Peripheral Economies*, Macmillan, London, 1978.

---------- *Marxism and Democracy in Chile, From 1932 to the fall of Allende,* Yale University Press, New Haven, 1988.

Ferrier, R.W.and A. Fursenko (eds)., *Oil in the World Economy,* Routledge, London, 1989.

Friedman, W. (ed) *Public and Private Enterprise in Mixed Economies,* Columbia University Press, Columbia, 1974.

Fransman, M., Technology and Economic Development, Wheatsheaf Books, Brighton, 1986.

Fransman, M. and K. King (eds), Technological Capability in the Third World, Macmillan, London, 1984.

Furmston, M.P., *Cheshire and Fifoot, Law of Contract,* Butterworths, London, 1981.

Ghai Y.P.et al (eds), *The Political Economy of Law: A Third World Reader,* Oxford Press, Delhi, 1987.

-------------------- *Management of Public Enterprises through state holding corporations, Ljubljana, International Centre for Public Enterprises in developing Countries,* 1990.

Gilmore, G., *The Death of Contract,* Columbus Ohio State University Press, Ohio, 1974.

Grayson, E.G., *National Oil Companies,* John Wiley & Sons, New York, 1981.

Gruber, W.H. et al (eds), *Factors in the Transfer of Technology;* The MIT Press, London, 1969.

Hanson, A.H., *Public Enterprises and Economic Development,* Rouledge and Kegan Paul, London, 1959.

Hamilton, A.(ed), *Oil the Price of Power,* Rainbird, London, 1986.

Hawdon, D., *The Changing Structure of the World Oil Industry,* Croom Helm, London, 1985.

Herfeld, E.O., *Joint Ventures,* Jordan & Sons, Beruit, 1983.

Hood, N.and S. Young., *The Economics of Multinational Enterprise,* Longman, London, 1979.

Horn, N.et al , *The transnational Law of International Commercial Transnations, Studies in the Transnational Economic law,* Kluwer, 1982.

Horn, N.(ed) *Adaptation and Renegotiation of Contracts in International Trade and Finance,* Deventer, 1985.

Hossain, K., *Law and Policy in Petroleum Development,* Frances Printer, London, 1979.

Hymer, S., *The Multinational Corporation: A Radical Approach*, Cambridge Press, Cambridge, 1979.

International Petroleum Encyclopedia, Pennwell Publishers, Tulsa, Oklahoma, 1986.

Jenkins, R.O., *Transnational Corporations: Competition and Monopoly,* University of East Anglia, Mimeo, 1986.

------------- *Transnational Corporations and Uneven Development. The Internationalisation of capital and The Third world,* Methuen, London, 1987.

Khan, K.I.F.(ed), *Petroleum Resources and Development: Economic, Legal and Policy Issues for Developing Countries,* Belhaven Press, London, 1987.

Kick-Green, A.H.M. and D.Rimmer, *Nigeria Since 1970; A Political and Economic Outline*, Hodder & Stoughton, London, 1981.

Kolde, E.J., *International Business Enterprises,* Englewood Cliffs, Prentice Hall, 1973.

Kuusi, J., *The Host State and the Transnational Corporation; An Analysis of Legal relationships,* Saxon House, England, 1979.

Lall, S. and P.Streeten, *Foreign Investment, transnationals and Developing Countries,* Macmillan, London. 1977.

Lipton, C.J., *Negotiating and Drafting of Mining Development Agreements. An Inter-Regional Workshop arranged by the U.N.* Buenos Aires, Mining Journal Books limited, London, 1986.

Lowenfield, A.F., *International Private Investment,* 1976.

Luxembourg, R., *The Accumulation of Capital,* New York, 1964.

Macneil, I.R., *The New Social Contract; An Inquiry into Modern Contractual Relations,* Yale University Press, 1980.

Maine, H., *Ancient Law: Its connection with the early History of Society and its relation to Modern ideas,* London, T.Murray, 1901.

Marx K. and F. Engels, *The Communist Manifestor,* Progress Publishers, Moscow,1977.

Marx K., *Capital,* Volume 1, Harmandsworth, Pengiun, 1867.

------- *The Poverty of Philosophy,* London, 1936.

May, H., *Multinational Corporations in Latin America,* Council of America, New York, 1975.

Morse, E., *Innovative Financing of Petroleum Projects: Options During the Cyclical Downturn, Presentation for 1986* Honolulu Conference, Honolulu.

Nwabueze, B.O., *Nigeria's Presidential Constitution 1979-83. Second Experiment in the Constitutional Democracy,* Longman, Lagos, 1985.

Nwanko, A.A., *After Oil what next? Oil and Multinationals in Nigeria,* Fouth Dimention Publishers, Enugu, 1982.

---------- *Can Nigeria Survive?* Fourth Dimension Publishers, Enugu, 1981.

Nwankwo. G.O., *Nigeria and OPEC, to be or not to be,* Ibadan African Press, Ibadan, 1985.

Nzeribe, F., *Nigeria; Another Hope Betrayed: the Second Coming of the Nigerian Military,* London, 1985.

Obilade, O.A. *The Nigerian Legal System,* Sweet & Maxwell, London, 1980.

Odell, P.and J. Rees (eds) *The International Oil Industry,* Macmillan Press, London, 1987.

Ogwu, U.J. and R.O. Olaniyan (eds), *Nigeria's International Economic Relations; dimensions of dependence and change,* NIIA, Lagos, 1989.

Okongwu, C., *Anatomy of the Nigerian Economy,* Fourth Dimension Publishers, Enugu, 1987.

Olaloku, F.A., *Structure of the Nigerian Economy,* Macmillan, Lagos, 1979.

Olisa, M.M., *Nigerian Petroleum Law and Practice,* Fountain Publishers, Ibadan, 1987.

Onimode, B.et al(eds), *Multinational Corporations in Nigeria,* Ibadan, 1983.

Onoh, J.K., *The Nigerian oil Economy. From Prosperity to Glut.* St Martin's Press, New York, 1983.

Otterbeck, L.(ed) *The Management of Headquarters: Subsidiary Relationships in Multinational Corporations,* Gower Publishing Company Ltd, Aldershot, 1981.

Panter-Brick, K.(ed) *Soldiers and Oil: the Political Transformation of Nigeria,* Frank Cass, London, 1982.

Pearson, S.R., *Petroleum and Nigerian Economy,* Stanford University Press, California, 1970.

Penrose, E.T., *The Large International Firm in Developing Countries: The International Petroleum Industry,* Allen & Unwind, London, 1968.

Phillip, G., *Oil and Politics in Latin America,* Cambridge University Press, Cambridge, 1982.

Picciotto, S. et al (eds) *State and Capital: A Marxist Debate,* Edward Arnold, London, 1977.

Posner, R.A., *Economic Analysis of Law,* Boston & Toronto, 1986.

Reuber, G.L., *Private Foreign Investment in Development,* Clarendon Press, Oxford, 1973.

Reyment, R.A., *Aspects of Geology of Nigeria,* Ibadan University Press, Ibadan, 1964.

Rodney, W. *How Europe Underdeveloped Africa,* Dares Salaam Tanzania Publishing House, Tanzania, 1970.

Sagay, E.I., *Nigerian Law of Contract,* Sweet & Maxwell, London, 1985.

Sampson, A., *The Seven Sisters. (The Great Oil Companies and the World they make),* Hodder & Stoughton, London, 1975.

Sayigh, Y.A., *Arab Oil Policies in the 1970s,* Croom Helm, London, 1983.

Schatzl, L.H., *Petroleum in Nigeria,* Ibadan University Press, Ibadan, 1965.

Seymour, I., *OPEC instrument of change*, Macmillan, London, 1980.

Sharma, D.D., *Swedish Firms and Management Contracts.* Uppsala, 1983.

The Shell B.P. Story. Port Harcourt, Shell B.P.Development Company of Nigeria, Limited, Port Harcourt, 1965.

Shivji, I.S.(ed) *Limits of Legal radicalism, Dares Salaam,* 1987.

Smith, N.D., and L.T. Wells, *Negotiating Third World Mineral Agreements,* Ballinger Publication, Cambridge, 1975.

Snyder, F. and P. Slinn.(eds) *International Law of Development, Comparative Perspectives,* Professional Books, Abingdon, 1987.

Stewart, F. and J. James (eds) The Economics of New Technology in Developing Countries, Frances Printer, London, 1982.

Stopford, J and J.Dunning, *Multinationals: Company Performance and Global Trends,* Macmillan, London, 1983.

Tanzer, M., *The Political Economy of International Oil and the Underdeveloped Countries,* Beacon Press, Boston, 1969.

Taylor, M.P.G.et al *The Joint Operating Agreement: Oil and Gas Law,* Longman, London, 1989.

Teece, D.J., *The MNC and the resource cost of International Technology Transfer,* Mass Ballinger Publications, Cambridge, 1976.

Toriguian, S., *Legal Aspects of Oil Concessions in the Middle East,* Hamashaine Press, Beirut Lebanon, 1972.

Tugendhat, C.et al, *Oil the Biggest Business.* Eyre 7 Methuen, London, 1975.

Turner, T. and P. Nore (eds) *Oil and Class Struggle,* Zed Press, London, 1980.

Understanding the Nigerian Oil Industry, An NNPC Public Affairs Publication Department, 1986.

Vaitos, C., *Employment Problems and Transnational Enterprises in Developing Countries: Distortions and Inequality,* I.L.O., Geneva, 1976.

Venkatarangaiya, M., *Federal Government,* India, 1935.

Vernon, R., *Sovereignty at Bay,* Penguin, Harmondsworth, 1973.

---------- *Storm over the Multinationals: The Real Issues,* Macmillan, London, 1977.

Walde, T.and N. Beredjick(eds), *Petroleum Investment policies in Developing Countries,* Graham & Trotman, London, 1988.

Wallace, C.N., *Legal Control of the Multinational Enterprise,* Martinus Nijhoff Publishers, London, 1983.

William, H.R.and C.J. Mayers, *Oil and Gas terms,* Matthew Bender &cmpany, New York, 1962.

Woodman, G.R.and A.N. Allot (eds) *Peoples' Law and State Laws:* The Bellagio Papers, Foris Publications, Holland, 1985.

Yankey, G.S., *International Patents and Technology Transfer to Less Developed Countries: The case study of Ghana and Nigeria,* Avebury, Gower Publishing Company, England, 1986.

Zartman, I.W., *The Political Economy of Nigeria,* Praeger, New York, 1983.

ARTICLES/JOURNALS.

Adams, G.A., "Achieving results through integration", Group Managing Director NNPC planning Letter, *NAPETCOR* Volume 10 No.1, 1989, p.4.

Adedeji, K., "State participation in the Nigerian petroleum Industry", 11 *Journal of World Trade Law* (hereinafter referred to as JWTL), 1977, p.170.

Adeniyi, K., "The legal anatomy of OPEC state oil corporations: perspectives on the Nigerian National Oil Corporation", *East African Law Review,* 1975, p.51.

Ajomo, M.A., "An appraisal of the OPEC", 13 *Texas International Law Journal,* 1977, p.14.

Anez, C., "The transfer of petroleum technology to Algeria", (Science Policy research Unit), University of Sussex, 1975, p.21.

Asante, S.K.B., "Restructuring transnational mineral agreements", 73 *American Journal of International Law,* 1979, p.366.

Beale, H., "Inequality of bargaining power", 6 *Oxford Journal of Legal Studies,* No.1, 1986, p.125.

Beale, H. and T.Dugdale, "Contracts between businessmen; planning and the use of contractual remedies. 2 *British Journal of Law and Society,* 1975, pp.45-59.

Behrman, J.N., "The Multinational Enterprise and U.S. foreign economic policy", 52 *Indiana Law Journal,* 1977, p.614.

Biersteker, T.J., "The illusions of state power: Transnational corporations and the neutralisation of host country legislation", 3 *Journal of Peace Research,* Vol.XVII, 1980, pp.207-221.

Brown, R., "Choice of law provisions in concession and related contracts", 19 *Monthly Law Review,* 1976, p.181.

Cardenes, T., New characteristics of the judicial framework of the exploitation of natural resources in the Latin American context, Paper prepared for the U.N. Centre on Transnational Corporations, New York, 1975, p.341.

Caves, R.E. "International Corporation: The industrial economics of foreign investment", 38 *Economia,* 1971, p.149.

Cohen, M., "The basis of contract", 46 *Harvard Law Review,* 1933, p.553.

Dabinovic, T.E.J.P., "Petroleum Service contracts in Argentina, Brazil and Colombia: Issues arising from their legal nature", 5 *Journal of Energy and Natural Resources Law* (hereinafter called JENRL), 1987, p.112.

Dam, K.W., "The pricing of Northsea gas in Britain", 13 *Journal of Law and Economics,* 1970, p.18.

Date-Bah, S.K., "Transfer of technology to Nigeria and patents and designs Act, 1970", 25 *Journal of African Law,* 1981, p.112.

David, M., "Pitfalls of joint operating agreements", 2 *Oil and Gas Law and Taxation Review,* 1983, p.13.

Dayo, F.B.A.O., "Utilisation of Nigerian natural gas resources: potentials and opportunites", 16 *Energy Policy,* 1988, p.8.

Edwards, I.and M. Merillat, "United States Law Schools and Latin America: Law and development", 60 *American Journal of International Law and Regulations,* 1966, p.1.

Egwuenu, C.I., "Nigerian Petroleum Laws and Regulations as they affect a commercialised NNPC", *NAPETCOR,* Vol.10, No.2, 1989, pp.8-11.

Epstein, R., "Unconscionability: A critical reappraisal", 5 *Journal of Law and Economics,* 1975, p.293.

Faber, M.and R. Brown., "Changing the rules of the game: Political risk, Instability and fair play in mineral concession agreements", 11 *Third World Quarterly,* 1980, p.22.

Fabrikant, R., "Production Sharing Contract in the Indonesian Petroleum Industry", 16 *Harvard International Law Journal,* 1975, p.37.

Farrel, T.M.A., "A tale of two issues, nationalisation, the transfer of technology and the petroleum multinationals in Trinidad and Tobago", *24 Social and Economic Studies Journal,* 1979, p.239.

Friedman, L.M., "The role of law and the function of the lawyer in the developing countries", 17 *Vanderbilt Law Review,* 1972, p.181.

Friedman, W., "Forms and functions of public enterprises: A comparative survey", 2 *Current Legal Problems,* 1969, p.79.

Fritzsche and Stockmayer, "Mining agreements in developing countries - Issues of finance and taxation", 2 *Natural Resources Forum,* 1978, p.43.

Hadari, Y., "Legal structure of the private multinational enterprise", 19 *Michigan Law Review,* 1973, p.729.

Higgins, R., "The taking of property by the state: Recent licences",13 *Hague Academy Recueil des cours*, 1982, p.298.

Howitz, M., "The historical foundations of modern contract law", 89 *Harvard Law Review,* 1974, p.917.

Kemper, R., "The concept of permanent sovereignty and its impact on mineral contracts", Legal and Institutional Arrangements in Minerals Development, *Mineral Journal Books,* 1982, Cap.4, p.30.

Kessler, F., "Contracts of adhesion - Some thoughts about freedom of contract", 17 *Columbia Law Review,* 1943, p.632.

Khan, K.I.F., "The transfer of technology and petroleum development in developing countries: with special reference to Trinidad and Tobago", 4 *JENRL,* No.1, 1986, p.12.

Killing, P., "Technology acquisition licence agreements and joint ventures", 82 *CJWB* 1980, p.134.

Kimball, D.A. Jr., "Secondary and Tietiary Petroleum Operations in Mexico: New Foreign Investment Opportunities", 25 Texas International Law Journal, 1990, p.28.

Leff, A., "Unconscionability and the code - The emperor's new clause", 115 *University of Pennsylvania Law Review,* 1967, p.485.

Lewis, G.M., "Comment: the joint operating agreement; partnership or not?", 4 *JENRL* 1986, p.81.

Lowry, S.T., "Bargaining and contract theory", 10 *Journal of Economic Issues,* 1976, p.32.

Lukman, A.R., "The case for cooperation in the International oil market", 19 *OPEC Bulletin,* 1988, p.18.

------------- "Nigeria allocates resources to LNG project", XIX/1 *OPEC Bulletin,* 1988, p.20.

------------- "World energy market supply", *OPEC Bulletin,* No.34 1987, p.24.

Mankabady, S., "Oil contracts in the Middle East", 1 *Internatioanl Contract Law and Finance Review,* 1980, p.12.

Mikdashi, Z., "Oil funding and international financial arrangements", 9 *Natural Resources Forum,* 1985, p.54.

Momodu, K.M., "Legal aspects of ownership of natural gas in Nigeria", 6 *JENRL,* No.4, 1988, p.92.

-------------- "Transfer of technology in the petroleum industry; The Nigerian experience", 22 *Journal of World Trade,* 1988, p.54.

Okogu, B.E., "The outlook for Nigerian oil; 1985-2000. Four scenarios", 10 Review of African Political economy, 1987, p.22.

Olorunfemi, M.S., "Managing Nigeria's petroleum resources", 24 *OPEC Bulletin,* 1986, p.25.

Omorogbe, Y., "Contractual forms in oil industry, The Nigerian experience with production sharing contracts", 20 *JWTL,* 1986, p.29.

------------ "The legal framework for the production of oil in Nigeria", *5 JENRL,* 1987, p.285.

Osunbor, O.A., "Laws and policy on the registration of technology transaction in Nigeria", 12 *JWTL,* 1986, p.125.

Reiter, B.J., "The control of contract power", 1 *Oxford Journal of Legal Studies,* 1981, p.352.

Sasegbon, M.F., "Current development in oil and gas law in Nigeria with comparative analysis with other African oil producing countries", 1 *Energy Law,* 1981, p.365.

Schanze, E. et al, "Mining agreements in developing countries",12 *JWTL*, 1978, p.140.

Sunkel, O., "Transnational capitalism and national disintegration in Latin America: Underdevelopment or Revolution?", *17 New York Monthly Review Press*, 1969, p.144.

Synge, R., "Energy in Nigeria", 18 *Middle East Economic Digest*, 1986, p.2.Sweezy, P.and H. Magdoff, "Notes on Multinational Corporations", 21 *New York Monthly Review*, 1973, p.2.

Tobi, N., "The Nigerian Enterprises Act", 15 JWTL, 1981, p.543.

Turner, T., "Multinational corporations and the instability of the Nigerian state", 5 *Review of African Political Economy*, 1976, p.56.

----------- "The transfer of oil technology and the Nigerian State", 7 *Development and Change*, 1976, p.365.

Walde, T., "Lifting the veil from transnational Mineral contracts: A review of the recent literature", 1 *Natural Resources Forum*, 1977, p.281.

----------- "Revision of Transnational investment agreements: Contracts flexibility in natural resources development". 10 *Lawyer of the Americas*, 1978, p.265.

----------- "Transnational investment in the natural resources industries", 11 *Law and Politics in International Business*, 1979, p.703.

Warren, B., "Imperialism and capitalist industrialisation", *16 New Left Review*, 1973, p.81.

Zakariya, H.S., "New directions in the search for and development of petroleum resources in the developing countries", 9 *Vanderbilt Journal of Transnational Law,* 1976, p.556.

------------- "The World Bank and Petroleum development in the Third World", *OPEC Review,* 1983, p.12.

------------- "Sovereignty, state participation and the need to restructure the existing petroleum concession regime", *Alberta Law Review,* 1972, p.230.

------------- "State petroleum companies", 12 *JWTL,* 1978.

------------- "Transfer of technology under petroleum development contracts", *JWTL,* 1982, p.221.

Zorn, S., "Permanent Sovereignty over natural resources", 7 *Natural Resources Forum,* 1983, pp.321-328.

NNPC OFFICIAL PUBLICATIONS

Address by Professor J. Aminu, Minister of Petroleum Resources on activities of the Nigerian Oil Industry, in West Africa Magazine, May 7, 1991, pp.i-iv.

Amu, L.A.O., A Review of Nigeria's Oil Industry, Lagos, NNPC Publication, 1982, p.6.

Commonwealth Organisations: A Publication compiled by the Information Division, Commonwealth Secretariat, Marborough House, London, 1990, p.311.

David-West, T., The outlook for Nigeria's oil, Lagos , NNPC Publication, 1984, p.4.

Government Guidelines on negotiation and drafting of international contracts, Federal Ministry of Justice, Lagos, 1989, p.12.

Ogunsola, O.O. NNPC Report on Market strategy for Nigerian oil, Lagos NNPC Publication, 1984, p.2.

Olorunfemi, M.A., NNPC; Overall policies for petroleum development, utilisation and marketing, Lagos NNPC Publication, 1984, p.4.

OPEC Member country profiles, Vienna, OPEC, 1983, pp.5-17.

Nigeria and OPEC, a list of available materials in NNPC library, Lagos, 1989, pp.7-16.

Ten Years of NNPC: A bibliography, Library and archives services, Lagos, NNPC Publication, 1989, p.12.

The NNPC; Yesterday, Today and Tomorrow, Published by Public Affairs Services, NNPC, Lagos, 1986, p.4.

NNPC: Petroleum Exploration and Development in Nigeria, NNPC Publication, Lagos, 1987, p.1.

NNPC; The Role of the Petroleum Inspectorate of the NNPC as a "Guardian" of the Nigerian Oil Industry, NNPC Publication, Lagos, 1988, p.18.

Marinho, F.R.A., "Nigeria: A regenerative economy or vegetative existence?, 1985 Alumni Lecture delivered at University of Ibadan, Nigeria, June 14, 1985, p.14.

Osuno, B.A., "The role of the Petroleum Inspectorate Division of the NNPC as the guardian of the Nigerian Oil Industry", A paper presented at the National Workshop on Petroleum Law, Organised by the Department of Jurisprudence and International Law, Faculty of Law, University of Lagos, 1984, p.5.

The Story of oil in Nigeria, Shell B.P. Petroleum Development Company of Nigeria Limited, Alperton Wembly, Middlesex, 1960, p.1.

The Report of the Tribunal of Inquiry into Crude Oil Sales 1980, Federal Government Press, Apapa, Lagos, 1980, p.12.

Progress of the Public Sector Participation in the Nigerian Oil Industry, NNPC Publication, 1986, p.40.

DISSERTATIONS CONSULTED

Ismaila, Mohammed., *The Nigerian Enterprises Promotion Decrees 1972-77 and Indigenisation in Nigeria,* Unpublished Ph.D. Thesis, 1985, University of Warwick,

Jallo, S.M., *The Development of Petroleum Industry and Petroleum Law in Nigeria*, Unpublished LL.M. Thesis, 1989, Centre for Petroleum and Mineral Studies, University of Dundee, Scotland.

Ogunlami, G.K.N., *An Analysis of Nigerian Petroleum Profits Taxation,* Unpublished Ph.D. Thesis, 1989, Centre for Petroleum and Mineral Law Studies, University of Dundee, Scotland.

Stevens, P.J., *Joint Ventures in Middle East Oil 1957-74.* Ph.D. Thesis, 1975, University of London.

Turner, T., *Government and Oil in Nigeria: A study of the Making and Implementation of Petroleum Policy,* Ph.D. Thesis, 1972, University of London.

Yankey, G.S., *International Patents and Technology Transfer to Less Developed Countries: The Case Study of Ghana and Nigeria,* Ph.D. Thesis, 1986, University of Warwick.

TABLE OF STATUTES

Associated Gas Re-injection Decree, 1979, Laws of the Federation of Nigeria, 1979.

Acquisition of Assets (B.P. Company Limited) Act 1977 No.20, Laws of the Federation of Nigeria, 1977.

Algerian Oil Ordinance, No.17 1971.

The 1954 Nigerian Constitution (The Lyttelton Constitution).

The Independence Constitution 1960, Order in Council, Second schedule, No.1652.

The Petroleum Decree 1969, No.51, Laws of the Federation Of Nigeria, 1969.

The Constitution of the Federal Republic of Nigeria, 1979 as amended by Decree No.1 1984 and No.17 of 1985.

The Second National Development Plan Document 1970-1974, Lagos, Federal Ministry of Information, 1970.

The Fifth National Development Plan Document (Plan Period 1986-90), Federal Ministry of Information, 1986.

Petroleum Technology Development Fund Act 1973 No.25, Laws of the Federation of Nigeria, 1973.

The Nigerian Enterprises Decrees, 1972-77.

National Office of Industrial Property Act 1979, Laws of the Federation of Nigeria, 1979.

NNPC Act No.33, 1977.

The Privatisation and Commercialisation Decree No.25, 1988, Laws of the Federation of Nigeria, 1988.

Minerals Oil Safety Act, 1963, Laws of the Federation of Nigeria, 1963.

Statute of the Corporation Venezuela del Petroleo, Decree No.260, 1960.

Statute of Iraq National Oil Company Law, No.123, 1967.

Exclusive Economic Zone Act, 1978, Laws of the Federation of Nigeria, 1978.

Oil Money Special Report No.59, New York, 1983.

Petroleum (Drilling and Production) Regulations 1969, Laws of the Federation of Nigeria, 1969.

Petroleum Training Act, 1972, Laws of the Federation of Nigeria, 1972.

U.N.RESOLUTIONS/DOCUMENTS.

Energy Supplies for Developing Countries; Issues in transfer and development of technology, UNCTAD, 1980, UN.Document TD/B/C.6/31, 1980.

UNCTC Transnational Corporations in World Development, Third Survey, New York, UN. ST/CTC/46, 1983.

U.N. Code of conduct on Transnational Corporations, UNCTC. UN New York, September, 1986.

World Development Report 1986 and 1988, Oxford University Press for the World Bank, New York/London.

OPEC RESOLUTIONS/DOCUMENTS.

OPEC, Annual Statistical Bulletin, 1991.

OPEC, Annual Report, Vienna, 1980-89.

OPEC, Basic Oil Information, 1983.

OPEC, Facts and Figures, 1982-90.

OPEC, Official Resolutions and Press Releases, Supplement, Vienna, 1987.